AN ANALYSIS ON THE LEGALITY OF EUTHANASIA IN NIGERIA: REFORMING THE LAW

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ABSTRACT

Euthanasia is a situation whereby the life of the terminally ill patient is terminated to relieve him from pain and suffering. Studies have shown that euthanasia is common among critical care doctors especially in countries that do not legalise the practice. Meanwhile, countries that legalised euthanasia have the problem of controlling it from being abused. There is a fear that legalising it will create a slippery slope and no regulation will be able to control it. Euthanasia is illegal in Nigeria. Despite its illegality, this study intends to investigate and find out whether it is being practiced in the country. This research examines the legal framework for the practice of euthanasia in Nigeria. The decision of the Nigerian Supreme Court in *MDPDT v. Okonkwo* recognised the right of the patient to refuse medical treatment even where it could lead to death, which many scholars regarded this as a starting point for its legalisation. This research adopts doctrinal as well as empirical research methodology. Interview method was employed as a compliment to achieve the objectives, thereby making it a socio-legal research. The research selected sixteen respondents for the interview, comprising of major actors in the field of medicine, law, patients and some religious scholars. The research reveals, *inter alia*, that passive euthanasia, as opposed to active euthanasia, is being practiced in Nigeria. It is therefore discovered that the existing legal framework is inadequate in addressing this issue. Therefore, the recommendation is offered for the amendment of the existing laws on euthanasia in Nigeria.

Keywords: Euthanasia, Passive and Active Euthanasia, Terminal Illness, Nigeria.

ABSTRAK

Euthanasia adalah suatu keadaan di mana nyawa pesakit yang uzur ditamatkan untuk membebaskannya dari kesakitan dan penderitaan. Beberapa kajian menunjukkan bahawa euthanasia adalah lumrah di kalangan doktor kepada pesakit yang uzur terutamanya di negara-negara yang tidak membenarkan praktis tersebut. Sementara itu, negara-negara yang membenarkan euthanasia mengalami masalah bagi mengawal penyalahgunaannya. Terdapat juga kebimbangan jika euthanasia dibenarkan dari aspek undang-undang akan menyebabkan keadaan menjadi semakin serius tanpa undang-undang untuk mengawalnya. Euthanasia adalah diharamkan di Nigeria. Walaupun diharamkan, kajian ini bertujuan untuk mengkaji dan mengetahui samada amalan tersebut dipraktikkan di negara ini. Penyelidikan ini meneliti kerangka undang-undang bagi amalan Euthanasia di Nigeria. Keputusan Mahkamah Agong Nigeria dalam kes *MDPDT v. Okonkwo* mengiktiraf hak pesakit untuk menolak mendapatkan rawatan walaupun kesannya boleh membawa kepada kematian, yang mana kebanyakan sarjana menganggap ia sebagai titik permulaan bagi membenarkan amalan tersebut. Metodologi kajian ini menggunakan kajian doktrinal dan empirikal. Kajian doktrinal ini menggunakan kaedah temubual bagi melengkap serta mencapai objektif kajian, menjadikan kajian ini sebagai kajian sosio perundangan. Bagi temubual, kajian ini memilih enam belas orang responden yang terdiri daripada pakar-pakar bidang perubatan dan undang-undang, pesakit dan beberapa ilmuwan agama. Penyelidikan juga mendedahkan bahawa euthanasia secara pasif diamalkan di Nigeria berbanding euthanasia secara aktif. Kajian mendapati rangka kerja undang-undang yang sedia ada tidak mencukupi dalam menangani isu ini. Oleh itu, kajian ini mencadangkan agar undang-undang sedia ada berkaitan Euthanasia di Nigeria dipinda.

Kata Kunci: Euthanasia, Euthanasia Secara Pasif dan Aktif, Sakit Uzur, Nigeria

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5. Criminal Code. Netherland, 1881
6. Criminal Law Consolidation Amendment Act *(SA) (CLCA)*. Australia, 1983
7. Death with Dignity Act. Oregon, United State, 1997
8. Death Definition Act. South Australia, 11983
9. Euthanasia Act, Belgium, 2002
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2. American Convention on Human Right 1969
3. International Covenant on Civil and Political Rights, Nation, United. 1996
4. European Convention on Human Rights (ECHR) 1953
5. Universal Declaration on Bioethics and Human Rights, 1945
6. United Nation Universal Bioethics Declaration, 2005
7. World Health Organization. "International Guidelines for the Determination of Death – Phase I, Montreal Forum Report," 201
8. World Medical Association Declaration on Euthanasia. Spain, 1987

LIST OF ABBREVIATIONS

ACHPR	The African Charter of Human and People's Rights
CPR	Cardiopulmonary Resuscitation
DBE	Doctrine of Double Effect
ECHR	European Convention of Human Right
ECHR	European Court of Human Right
ICU	Intensive Care Unit
LPELR	Law Pavilion Electronic Law Report
MDPDT	Medical and Dental Practitioners Disciplinary Tribunal
NHST	National Health Service Trust
TLRASA	Termination of Life on Request and Assisted Suicide Act
WHO	World Health Organisation
NWLR	Nigerian Weekly Law Report
SC	Supreme Court
DPP	Deputy Public Prosecution

CHAPTER ONE:
INTRODUCTION

1.1 Background of the Study

Euthanasia originates from Greek referring to good death.[1] Any kind of easy and gentle death is called euthanasia. In the 20th century, the definition indicated that assisted death through medicine is a total control of pain and endless suffering.[2] It then started being applied to children born with deformity or withholding and withdrawing medical treatment to elderly sick people and other hopeless patients.[3] Technically, it is a deliberate act of killing or hastening death because of compassion.[4] Somerville[5] one of the leading advocates against legalising euthanasia looks at it as a situation where the intention of the physicians will be to cause the death of the patients because the patient is suffering from excruciating pain.

However, all the definitions given above restrict euthanasia to a positive act of terminating life, but the meaning given by the World Health Organisation (WHO)[6] is more encompassing. It is defined as putting a patient to death intentionally or refusing

[1] Yusuff Jelili Amuda, "Commission of Euthanasia Against a Hospitalised Child : An Evaluation of the Shariah Provisions and the United Nation Convention," *Malayan Law Journal Articles* 2 (2012): 1.
[2] Fadinand Sakali, "The Contemporary Euthanasia Debate in the Light of African World View and Ethics," *SEGi Review* 6 (2013): 5.
[3] Shai J. Lavi, *The Morden Art of Dying: A Histroy of Euthanasia in the United States*, vol. 53 (New Jersay: Preston University Press, 2005), 177.
[4] Robert Dingwall, "Cambridge Textbook of Bioethics," *Bulletin of the World Health Organization* 86, no. 8 (2008): 655.
[5] Margaret Somerville, *McGill Centre for Medicine , Ethics and Law by La Commission de La Santé et Des Services Sociaux Du Québec Consultations Auditions Publiques Sur Le Projet de Loi n ° 52 , Loi Concernant Les Soins de Fin de Vie*, 2013.
[6] World Health Organisation, "A Glossary of Terms for Community Healthcare and Services for Older Persons," 2004, http://www.who.int/kobe_centre/ageing/ahp_vol5_glossary.pdf. Accessed 1/4/2016.

to prevent the death of a patient by withdrawing or withholding treatment. Thus, this research adopts it due to its wide coverage. Supporting this, Davies[7] described it as any decision made with intent to terminate the life of any patient. However, the argument still goes on regarding whether withdrawing treatment and omission to act amounted to killing. Euthanasia should have been interpreted to include act or omission to induce or to hasten death. This is more encompassing, putting together both passive and active euthanasia. For example, where a positive act is done to cause death (Active Euthanasia) and where treatment is withheld or supporting machine is turn off to cause death (Passive Euthanasia) respectively.

Therefore, scientific development has greatly influenced euthanasia and medical practice generally. Life is being prolonged with technology, to the extent that a lot of people who died from complicated disease are more likely to survive a long time. Some scholars[8] argue that since the medical technology does not provide relief for pain and suffering, perhaps the only solution to certain diseases is death. However, moral and ethical issues in the medical field have gone beyond whether taking life to relief pain is right or wrong.[9] Criminal laws are available prohibiting termination of life including human rights.[10] Doctors have ethical guiding principles and code of conduct to ensure good practice and well-being of the patients.[11] Patients, on the other hand, have evolving human rights issues in their dealings with doctors.[12]

[7] World Health Organisation, "A Glossary of Terms for Community Healthcare and Services for Older Persons," 2004.
[8] Carl Wellman, *Medical Law and Moral Rights* (Netherlands: Springer, 2005), 9.
[9] Oluyemisi Bamgbose, "Euthanasia: Another Face of Murder.," *International Journal of Offender Therapy and Comparative Criminology* 48, no. 1 (2004): 111.
[10] Nicole Steck et al., "Suicide Assisted by Right-to-Die Associations: A Population Based Cohort Study," *International Journal of Epidemiology* 43, no. 2 (2014): 614.
[11] Raphael Cohen-Almagor, "First Do No Harm: Intentionally Shortening Lives of Patients without Their Explicit Request in Belgium," *Journal of Medical Ethics*, (2015): 1.
[12] Ernest Owusu-Dapaa, "Euthanasia, Assisted Dying and the Right to Die in Ghana: A Socio-Legal Analysis.," *Medicine and Law* 32, no. 4 (2013): 587.

Consequently, the debate on the right to request for termination of life within various context continues.[13] Many scholars[14] believe euthanasia should be preferred than the right to withhold or withdraw life support. The reason being that even where the life-supporting machine is turned off or withdrawn, it takes a long time for the patient to die and this has not solved the patient's problem of suffering and pain. However, in many jurisdictions turning off life supporting machine in a hopeless medical condition is not murder.[15] Although this may be an omission leading to the death of the patient, this view depends on the jurisdiction in question. The centre of the argument has been on law, ethics and human rights.

The essence of law and ethics are to ensure good medical practice among doctors in dealing with patients. This is because doctors are not considered infallible and free from censure. The attitude of some doctors, during the World War II (Nazi Doctors) who participated in a medical research on Jewish without informed consent, attest to this assertion.[16] It is true that the aim of medical practice is to ensure a better living, provide a cure and eliminate pain. This is what Hippocratic Oath aimed to achieve for over 2000 years.[17] During this period doctors were presumed to have the double role of killers and healers, but the Oath principles changed that assumption. Today doctors are seen only as healers. According to Somerville, legalising euthanasia will take the

[13] Joachim Cohen et al., "Public Acceptance of Euthanasia in Europe: A Survey Study in 47 Countries," *International Journal of Public Health* 59, no. 1 (2014): 143.
[14] Ronald B Standler, "Legal Right to Refuse Medical Treatment in the USA," 2012.
[15] Vacco v. Quill, US. 521 (1997)793.
[16]Yuhanif Y. C. N. Anisah, and M. D. Md Rejab, "The Non-Admissibility of the Principle of Therapeutic Privilege in Clinical Trials," *Pertanika Journal of Social Sciences and Humanities* 23, no. August (2015): 51.
[17] Ronald B Standler, "Legal Right to Refuse Medical Treatment in the USA," 2012.

practice of medicine to the period before Hippocratic Oath.[18] That is the period when doctors played the double role of killers and healers.

However, where the aim of healing the patient cannot be achieved, patient's condition gets worst. The next idea is to control his pain and suffering either through palliative care[19] or euthanasia. This leads to the argument for and against euthanasia. The jurisprudence is developing by clamouring for the right to die to be part of the right to life, privacy and family life.[20] In countries like Netherlands and Belgium[21] Euthanasia is legalised.[22] It is settled that in Nigeria and Malaysia the practice still remains illegal.[23] However, in both Malaysia and Nigeria, there is no decided case where a doctor is convicted of termination of life through euthanasia. A clear examination of the Malaysian and the Nigerian Penal Code indicate that euthanasia is a crime.[24] This will not, however, close the door to argue that if it is a voluntary euthanasia it may imply consent which according to section 300 of the Penal Code[25] falls under the exception of murder punishable by death.[26] The same position with Nigeria, where there is no case on euthanasia that came before any courts. However, the Nigerian

[18] Margaret Somerville, "The Case against Euthanasia and Physician-Assisted Suicide.," *New Zealand Law Review* 23, no. 2 (2016): 33. http://ovidsp.ovid.com/ovidweb.cgi?T=JS&PAGE=reference&D=med4&NEWS=N&AN=16604746. Accessed 16/12/2017

[19] ''Provides comprehensive management of physical, psycho- social, spiritual and existential needs of patients (and families) that are facing a life limiting illness.'' Mary S. McCabe and Nessa Coyle, "Ethical and Legal Issues in Palliative Care," *Seminars in Oncology Nursing* 30, no. 4 (2014): 287,

[20] Regina v. Director Public Prosecutor, UKHL, 61 (2001)800.

[21] Margret P. Battin et al, "Legal Physician-Assisted Dying in Oregon and Netherlands:evidence Concerning the Impact on Patient in Vulnerable Groups," Journal of Medical Ethics, (2007):27.

[22] "Euthanasia Physician Assisted Suicide and Other Medical Practice Involving the End Life in the Neitherlands," The New Journal of Medicine 335 no,22 (1996): 1699.

[23] Puteri Nemie, Jahn Kassim, and Omipidan Bashiru Adeniyi, "Withdrawing and Withholding Medical Treatment; A Comparative Study Between the Malaysian, English and Islamic Law," *Medicine and Law* 29 (2010): 4443.

[24] Yusuff Jelili Amuda, "Commission of Euthanasia Against a Hospitalised Child : An Evaluation of the Shariah Provisions and the United Nation Convention." *Malayan Law Journal Articles* 2 (2012): 3.

[25] Penal Code No 574, and 312 (1997) (Malaysia), Amended by Penal Code (Amendment) Act No 727, 1989.

[26] Norchaya Talib, *Euthanasia-A Malaysian Perspective* (Selangor: Sweet and Maxwell, 2002), 65.

Supreme Court[27] reaffirmed individual's right to reject any treatment even where such rejection could lead to the death of the patient. This decision is based on the right of the patient to autonomy and self-determination.[28] It is not clear whether the decision will protect a doctor who withdraws or withholds treatment on the request of the patient to die.

The debate is still ongoing regarding the legal implication of administering an overdose of morphine to relieve pain that has the consequences of hastening death or withdrawing and withholding medical treatment which may also lead to death.[29] Many scholars believe that giving drugs to relieve pain with the effect of hastening death will not be euthanasia. This view is linked to the *Doctrine of Double Effect,*[30] which means any act done with good intention is a justification for its evil consequences. This is because; it is believed that doctors' intention is not to kill. While withholding and withdrawing treatment means that death occurs from the natural result of the disease not the direct action of the doctors. All these are different from actively putting the patient to death, which many try to distinguish from euthanasia.[31]

Arguments and views have always been held regarding the justification for euthanasia as human rights, especially right to life, private and family life.[32] Although both international and municipal human rights laws do not directly relate euthanasia to right

[27] Medical and Dental Practitioners Disciplinary Tribunal v. John Emewulu Nicholars Okonkwo, LPPELR, 1999 (2001) 213.
[28] Ben Livings, "A Right to Assist? Assisted Dying and the Interim Policy," *Journal of Criminal Law* 74, no. 1 (2010): 31.
[29] John Coggon, "The Wonder of Euthanasia: A Debate That's Being Done to Death," *Oxford Journal of Legal Studies* 33, no. 2 (2013): 401.
[30] Lawrence Masek, "Intentions, Motives and the Doctrine of Double Effect," *Philosophical Quarterly* 60, no. 240 (2010): 567.
[31] Lavi J Shai, *The Modern Art of Dying: A History of Euthanasia in the United State* (New Jersay: Preston University Press, 2005), 41.
[32] Margaret Somerville, *Death Talk: The Case against Euthanasia and Physician-Assisted Suicide* (London: McGill-Queen's University Press, 2001), 205.

to life, private and family life.[33] It was argued that putting a patient under ventilation or palliative care against his will is an inhuman and degrading treatment and therefore a violation of his human right.[34] It was also argued before the European Court of Human Rights that suffering that comes naturally from illness, physical or mental, may be covered by Article III[35] for which the authorities can be held responsible.[36] Does this mean that doctors who try to save the life by resuscitating their patients or use life support are liable for subjecting that patient to inhuman and degrading treatment?[37] What if the doctor's actions result in the patient's death? This is the kind of dilemma doctors find themselves and the law is inadequate in addressing the situation.

Furthermore, right to life is an uncompromised human claim. This is supported by a number of International Human Rights instruments and Municipal Laws.[38] For example, the Universal Declaration of Human Rights 1948, which provides that every person has the right to life, liberty, and security of persons.[39] The African Charter of Human and People's Rights 1966[40] also declares that human life is inviolable; thus, every man shall be entitled to respect for his life. Other regional instruments include the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950[41] and the American Convention on Human Rights 1969.[42] Principally,

[33] Richard Huxtable, *Euthanasia , Ethics and the Law from Conflict to Compromise*, ed. Sheila A M McLean (New York: Routledge Tailor and Francis Group, 2007),145.
[34] Warnock and Macdonald, *Easeful Death Is There a Case for Assisted Dying?* 05.
[35] Council of Europe, *European Convention on Human Rights (ECHR), European Court of Human Rights*, vol. 20, 2010, http://www.echr.coe.int/Documents/Convention_ENG.pdf. Accessed 6/3/2018
[36]Lewis and Buchan Chalse Lewis, Andrew Buchan, "Clinical Negligence a Practical Guide," Bloomsbury,professional Limited, 2012, 527.
[37] That is by way of putting feeding tube where the patient cannot eat through the mouth, ventilator where the patient cannot breathe independently or by using CPR when the heart stops. Michel Harlos, Ventilator Withdrawal of Patients with "Zero Capability" for Respiratory Function" *American Medical Association Journal of Ethics*, Volume 5, no. 2 (2003):1.
[38] Raphael Cohen-Almagor, "An Argument for Physician-Assisted Suicide and against Euthanasia," *Ethics, Medicine and Public Health* 1 (2015): 434.
[39] Universal Declaration of Human Right (General Assembly Resolution, 1984).
[40] African Charter of Human and People's Right, vol. 58, (1966).
[41] Council of Europe, European Convention on Human Rights (ECHR).
[42] American Convention on Human Right UNTS 1144 (1969).

the instruments reiterate the sacred nature of human life. This makes the role of the doctors in relation to euthanasia delicate and complicated. It is difficult to discern what position to take between ethics of the medical profession established over 2000 years and human rights of the patients. In the event of a conflict, one must take priority.

Socio-cultural and religious differences cannot be ignored in the struggle for euthanasia to be made lawful. Even in Europe and America where the practice got some acceptance is because culture, tradition, and religion do not have much influence on the way of life.[43] The reasons are based on human rights which is brought about by different organisations and associations. They are sometimes called Right to Die Group or Advocate for Euthanasia**.**[44] They believe it is the patient's right to autonomy that puts him at the centre of the discussion. Respect for the autonomy of the person means that he is the ultimate moral authority, he has the last word; the ultimate decision maker who determines his life and death.

In Nigeria, euthanasia is not acceptable by the Court and the National Assembly. However, there are compelling factors that influence patients in Nigeria to surrender to death. Despite that culture and religion will not allow patients to commit suicide or request for euthanasia. However, a different set of factors make the practice of euthanasia a necessity in Nigeria. The factors include economic factors which relate to the high cost of healthcare and poverty; the government failed to provide adequate healthcare facilities and drugs,[45] religious and cultural influences which relate to the value of the Nigerian society.

[43] Erin V. W Andrew et al., "Social-Cultural Factors in End-of-Life Care in Belgium: A Scoping of the Research Literature.," *Palliative Medicine* 27, no. 2 (2013): 131.
[44] Gorsuch M Neil, *The Future of Assisted Suicide and Euthanasia* (Princeton: Princeton University Press, 2006), 37.
[45] Olaronke Iroju et Al, "Interoperability in Nigeria Healthcare System: The Way Forward," *International Journal of Information Engineering and Electronic Business* 4 (2013): 2.

1.2 Problem Statement

Having stated in the background that the practice of euthanasia is controversial and in view of the factors that may influence its practice, the following problems are identified. These problems necessitate the need to reconsider the laws again in Nigeria:

1.2.1 Lack of Good Healthcare System and the Cost of Healthcare Services

Some illnesses are found across regions and world over, but where there is good healthcare system, the menace is tackled. Kidney disease, for example, presents a serious challenge and problem in Nigeria.[46] Evidence indicated that over 316 billion is required for dialysis every year as at 2014.[47] Nigerian government cannot afford this amount and 117 new cases are diagnosed every year, and only 71 Dialysis Units are available throughout the country. The ones available are 42 public, 34 private and 10 Renal Transplant Units, 8 public 2 private.[48] Patients depend on family financial assistance. Those with the poor background which is about 80% cannot afford three sessions of dialysis at 25,000 Naira per session, every week. This is one of the factors that influence the quest for recognising euthanasia in the West to relief family from such burden. It must be noted that this kind of problem will not be faced in some developing countries like Malaysia. The government has made a good effort in health, by providing facilities and the cost of healthcare is very low because of insurance policy compared to Nigeria. American Publication International Living put Malaysia's healthcare system third in the world out of 24 countries during its 2014 Global

[46] Innocent Ekechikwu, "Bulding a Solid Healthcare System in Nigeria: The Way Forward," *Academic Journal of Inter Disciplinary Studies* 3 (2014): 2.
[47] Bamgboye Ebun, "The Looming Epidemic of Kidney Failure in Nigeria," Lancent Glob Health 2 (2014): 178.
[48] Odubanjo M O. et al., "Renal Data from Asia -Africa End-Stage Renal Disease in Nigeria: An Overview of the Epidemiology and the Pathogenetic Mechanisms," *Saudi Journal of Kidney Disease Transplantation*, 22, no. 5 (2011): 1064.

Retirement Index, taking after Spain, Italy, and New Zealand.[49] According to the Director of Malaysian Ministry of Health, medical attention is a guaranteed right to every citizen regardless of ability to pay; this is because government subsidised healthcare for its citizens.[50] There are no such practices obtainable under the Nigeria healthcare system and this account for patient getting weak healthcare services. Even the National Health Insurance Scheme (NHIS) does not cover more than 4% of the total population of Nigerians. The scheme is aimed at providing cheaper healthcare services for the citizens.[51] This problem makes poor citizens surrender to death. Therefore, the law should have made Section 17 (3) (d) enforceable to ensure adequate medical healthcare facilities.

1.2.2 Lack of Advanced Medical Technology

Medical technology brought about development in managing serious illness and body system failure, such as Artificial Feeding Tube; Respirators, Iron lungs, Dialysis Machines, Suction Machines, Electric Nerve Stimulator and the rest. The use of these machines for a therapeutic reason has its own health effect and implications.[52] Cardiopulmonary Resuscitation (CPR) for example, has damaging side effects which include rib fracture and damage to internal organs; adverse clinical outcomes such as hypoxic brain damage; and other complications. The system may fail to work especially if there is the need to restart the heart and, it means the patient may die an undignified death in a traumatic manner. The same thing with feeding tube, if the nutrient intended for the gastrotestinal track is inadvertently taking elsewhere like

[49] Liang Tanyi, "Malaysia Healthcare," US Magazine, January 24, 2014.
[50] Malaysia Health Insurance, http://www.malaysia-health-insurance.com/information/cost/ accessed 25/6/2016
[51] National Health Insurance Scheme (NHIS), "Scope of Coverage," https://www.nhis.gov.ng/scope-of-coverage/2017. Access 12/10/2017
[52] Arthur S. Slutsky, "History of Mechanical Ventilation. From Vesalius to Ventilator-Induced Lung Injury," *American Journal of Respiratory and Critical Care Medicine* 191, no. 10 (2015): 1106.

vasculature it may cause death. Despite the side effect of these medical aids they proved to be useful in the modern day medical practice. However, the problem in Nigeria is not the effect of the machines, but the availability of these machines that is why the beds in Intensive Care Unit (ICU) are limited. Lack of these facilities put doctors in Nigeria in a risk of violating professional code, and there is no adequate legal framework to save them.[53] Therefore, where doctors could not save their patient they may face the trouble of legal battle with the family of the deceased. The law has not made the motive of the doctors relevant in case of any litigation in a court of law.

1.2.3 Dilemma of the Doctors

Doctors are in a serious dilemma where the the patient or their family asked them to withdraw life support.[54] First, it is the patient's right to autonomy to refuse or withdraw treatment. Secondly, it is a crime if the doctor follows the wishes of his patient leading to termination of life. At the same time, the patient may not be able to continue with the treatment due to financial problem to settle the medical bills or the treatment is hopeless and burdensome. The dilemma is, should they watch their patients suffer endlessly without cure and hope of recovery or respect the wishes of their patients by withdrawing treatment and life supporting machine to hasten death and face murder charges. Their conduct will be deemed a crime according to the current legal framework.[55]

There are also other reasons that make patient to opt for death, for example where the treatment is not affordable. By implication, the patients must retire back home, thereby

[53] Sani Ibrahim, Yuhanif Yusof, Rohizan Halim "Legal Application of the Offence of Murder and Euthanasia in Nigeria," *UUM Journal of Legal Studies (UUMJLS)* 132 (2017): 113–32.
[54] Mike Chekwube OBI, "A Critical Appraisal of Euthanasia under Nigerian Laws," *NAUJILJ* 11, no. 2008 (2014): 1–14.
[55] Ibid

withdrawing from all form of treatment and wait for death. Take for example cancer patients[56] or patients with cardiopulmonary arrest who needs ventilator or respirator and a feeding tube to sustain them. This poses a serious problem to the question of life and death; it will be a necessary factor for both the patients and doctors to take the option of death, because of these challenges.[57] Since it will be expensive for the Nigerian government to manage and maintain a dying patient for so long, the government must provide a legal framework that will settle the dilemma of the Nigerian doctors.[58] The reason that there is the tendency that many doctors are euthanising their patients unknown to the authority, patients, and their families, it is necessary to look at the laws again.[59]

1.2.4 Socio-Cultural and Religious Factors

Religion and culture are challenges to the recognition of the practice of euthanasia in Nigeria and other developing countries. Different societies have different culture which have direct effect on the acceptance of the practice of euthanasia especially in Africa particularly Nigeria.[60] Available literature has shown that even in the West, religion plays an important role in accepting the practice and most of the arguments against it are based on religious sentiment.[61] On the cultural perspective many societies consider any act of taking life as taboo because in the society like Baganda in Uganda anyone who dies a natural death is honoured, but if he commits suicide his remains

[56] Chalse Foster, *Choosinf Life Choosing Death: The Tyranny of Autonomy in Medical Ethics and Law* (Oregon: Halt publishing, 2009),123.
[57] Hilliad Bryan, "The Moral and Legal Status of Physician-Assisted Death: Quality of Life and the Patient-Physician Relationship," *Issues in Integrative Studies* 18 (2000): 47.
[58] David Solomon, "Christian Bioethics, Secular Bioethics, and the Claim to Cultural Authority.," *Christian Bioethic*s 11, no. 3 (2005): 349.
[59] Owusu-Dapaa, "Euthanasia, Assisted Dying and the Right to Die in Ghana: A Socio-Legal Analysis." 12
[60] Emiri F.O, *Medical Law and Ethics in Nigeria.* (Lagos: Malthouse Press Limited, 2012), 34.
[61] Dorothy J.N Kalanzi, "The Controversy over Euthanasia in Uganda: A Case of the Baganda," *International Journal of Sociology and Social Policy* 33, no. 3/4 (2013): 203.

will be put to disgrace. In Nigeria particularly, in the Yoruba society where killing human being was historically tolerated and not considered a taboo in certain situations,[62] but as this cultural tolerance is no more permitting any act of hastening death in the name of relieving patients from pain will face a serious challenge.

1.2.5 Intersection between Bioethics, Human Rights and the Law

The relationship between bioethics, human rights and the law has created a serious dilemma for doctors, especially in relation to critical care. In Nigeria the legal framework is grossly inadequate to regulate the end of care practice. Doctors are approached with the problem of preserving the sacred nature of human life, quality of life and control of symptoms and pain. They are at the same time concern about their personal belief, ethics and professional conduct.[63] The problem is that doctors must respect the wishes of their patients including the right to refuse and withdraw treatment even where it will lead to death. On the other hand, it is a crime to do anything that may lead to death even with the consent of the patient. A practical example of this situation was given by one of the respondents in this research. A patient with chronic tuberculosis was quarantined while taking medication to avoid infecting others, however when he started getting relief he discontinued the treatment. He has the right to refuse medical treatment under the legal framework.[64] However, there is the risk of spreading the disease around. This situation is a clear case of conflict between the law and public interest and human rights. For example, can the doctor terminate the life of the patient to save more life or allow the patient to exercise his right to refuse medical

[62] Olaronke Iroju et Al, "Interoperability in Nigeria Healthcare System: The Way Forward," *International Journal of Information Engineering and Electronic Business* 4 (2013): 2.
[63] Puteri Nemie Jahn Kassim and Fadhlina Alias, "End-of-Life Decisions in Malaysia: Adequacies of Ethical Codes and Developing Legal Standards.," *Journal of Law and Medicine* 22, no. 4 (2015): 934.
[64] Medical and Dental Practitioners Disciplinary Tribunal v. John Emewulu Nicholars Okonkwo, LPPELR, 1999 (2001)213

treatment even where it will lead to his on death? This is also clear here that the law is inadequate to resolve issues such as this.

Euthanasia under the Nigerian Penal System is a crime.[65] Anybody who acts or omits to act thereby causing death is guilty of a crime. The motive of the doctor to relieve pain or consent of the patient is not an excuse. However, it is in doubt whether withdrawal or withholding of life support by doctors can lead to a conviction for murder. This is whether with or without the consent of the patient or his family. Thus, the law prohibits any steps to terminate any patient's life. The major ingredient of the offence of murder is knowledge or intention. Where this is established, the reason for such action has no relevance in law.[66]

In the West, the *Doctrine of Double Effect* is an established medical practice.[67] However, the practice has no place in Nigeria.[68] Under this doctrine, doctors are permitted to administer pain-relieving drugs that may simultaneously cause death in the process.[69] This is a gap under the Nigerian legal framework especially looking at the scope of criminal responsibility. The law recognises the right of the patients to self-determination and autonomy, and at the same time criminalises the conduct of the doctors where they obey the wishes of their patients that may lead to death. Therefore,

[65] Section 306,308,326 and 327 Criminal Code Cap C38 Laws of the Federation of Nigeria 2004
[66] Innocent Ekechikwu, "Bulding a Solid Healthcare System in Nigeria: The Way Forward," *Academic Journal of Inter Disciplinary Studies* 3 (2014): 2.
[67] *Lord Devlin in R. V. Adams 1957* (unreported) "If the first purpose of medicine, the restoration of health, can no longer be achieved, there is still much for a Doctor to do, and he is entitled to do all that is proper and necessary to relieve pain and suffering, even if the measures he takes may incidentally shorten life"
[68] Bamgboye Ebun, "The Looming Epidemic of Kidney Failure in Nigeria," *Lancent Global Health* 2 (2014): 178.
[69] Otherwise known as *Doctrine of Double Effect* whereby if evil is inflicted in the process of achieving good, the intention is enough justification for it.

there has to be a balance between ethics, law and the rights of the patients, although the right of the patient shall be given priority.

This gap in the legal framework has created a dilemma for doctors in the medical practice. This position has also created an avenue to ask questions.

1.3 Research Questions

In this research, the researcher addressed four specific research questions:

1) What is the position of euthanasia under the Nigerian legal framework?
2) Is there a need for euthanasia being practiced in Nigeria?
3) What is the position of euthanasia from international perspectives?
4) What are the ways to improve the practices of euthanasia in Nigeria?

1.4 Research Objectives

There should be four main objectives of the research as follows:

1) To examine the legal position of euthanasia in the Nigeria.
2) To identify the adequacies and inadequacies of the legal framework governing euthanasia in Nigeria.
3) To study the legal issues on legalisation of euthanasia in selected jurisdictions.
4) To propose recommendations on reforming the law governing euthanasia in Nigeria and the viability of legalisation.

1.5 Significance of the Study

Research is conducted in order to find a solution to the problems affecting the society, organisation and other professional practices. The practice of medicine in Nigeria especially at the end of life care is a situation nobody knows with certainty what is happening. People die in ICU without explanation, and there are claims that doctors

one way or the other hasten the death of the patients. Furthermore, there is no adequate legal framework that regulate end of life care in Nigeria. This research investigated the practice using interview medium to know what is being practiced. The implication is that some rules and regulations must be provided and even the laws must be amended based on the findings of this research.

The significance of this research is that it has provided empirical prove on the practice of passive euthanasia in Nigeria. Although passive euthanasia is illegal, but the doctors still practice it because of necessity. Therefore, this further necessitate to providing the guidelines and even push for the amendment of the laws as recommended in this research.

Methodologically, this research is a further proof that doctrinal method with complement from empirical research is one of the best ways to investigate law as it applies to the society. The research shows that euthanasia is being practiced by doctors in Nigeria despite that it is illegal to do so. A qualitative method using interview medium is used to collect data from the stakeholders. This makes the findings dependable and acceptable as the reality of the situation in Nigeria.

The research also assists Nigerian doctors and medical students on the ethical issues regarding end of life decisions, and it will serve as reference materials for the lecturers and postgraduate students. Also, if the government adopts and implements some of the recommendations, the dilemma of doctors will be resolved.

1.6 Research Methodology

This research applied doctrinal and compliment it with qualitative research method. What methodology is used greatly influences the acceptance of the finding of such

research. This research adopted certain research methodologies to answer the research questions successfully. The methods are briefly explained below.

1.6.1 Research Design

Research design refers to a strategy applied in studying or conducting a research in a logical way, thereby, achieving the aim of the research.[70] The essence of using this is to enable the researcher to answer the research questions. Generally, the research method adopted is doctrinal; being a legal research is the best method to study a legal phenomenon. However, qualitative research with interview data collection medium is used to complement this research method. The essence is to investigate the relation of law to social, political and economic aspect of human life in relation to the practice of euthanasia. This is popularly known as socio-legal research.[71] This method is the best for this research because it fits directly to the research on the practice of euthanasia. The method is used to investigate the practice, perception, and views of certain members of the society over the phenomenon through interviews.[72] Adopting this method will give the researcher a deeper comprehension of the concept and its application.

1.6.2 Doctrinal Methodology

Doctrinal method of research concerns analysis of legal rules, i.e. from statutes and court decisions, rules of professional ethics or code of conduct of medical practitioners

[70] Research Guides University of Southern California, "Organising Your Social Sciences Research Paper: Types of Research Designs: Research Guides," 2016. . http//: www.plibguich des.usc.edu. Accessed 9/3/2016

[71] Levicev Vitalij, "The Synthesis of Comparative and Socio-Legal Research as the Essential Prerequisite to Reveal the Interaction of National Legal System," 2015.http://www.tf.vu.lt/dokumentai/Admin/Doktorantu_konferencija/Levicev.pdf accessed 23/6/016

[72]Walter Maggie, "Socio-Legal Research Theory and Practice: Qualitative Methods,".2015http://www.iisj.net/iisj/de/socio-legal-research-theory-and-practice-qualitative-methods-8109.asp?nombre=8109 23/6/2016

and other internet materials and literature. The doctrinal method is characterised by the study of legal texts more often described as the black letter law. The research adopted qualitative research as opposed to quantitative research as a compliment to the doctrinal method. The justification for using qualitative research is its ability to translate people's experience on some issues into a report. It provides information about people's attitude, conception, and understanding.[73] While quantitative is more scientific as it deals with survey hypothesis testing and is more objective. With the use of the qualitative method, the researcher has an in-depth understanding of the subject, although it limits certain information the source could offer.[74] Therefore this method deals with textbooks, journal articles, law reports, dictionaries and its research question take the form of asking what is so and so. This is followed by analysis and recommendations.

In view of the above, this research included investigation of principles, rules, and decided cases for the purposes of explaining and resolving the problems in the research and to achieve the desired objectives. Thus, existing laws, both municipal and international, regarding human rights and medical ethics especially of countries that legalised euthanasia are considered. The essence is to draw some lessons from the legal framework in those countries. Religious perspectives were equally explored.

Historical and philosophical methods are also used to trace the historical development of the practice of euthanasia. In the process philosophical ideas of some philosophers are used to fully understand the philosophy behind the struggle and agitation for

[73] "Qualitative Research Methods: A Data Collector's Field Guide, Module 1 Qualitative Research Method Overview," *Family Health International*, http://www.ccs.neu.edu/course/is4800sp12/resources/qualmethods.pd accessed 13/5/2016

[74] David Silverman, *Doing Qualitative Research: A Practical Handbook* (london: sage publication, 2000).2

legalising euthanasia.[75] These methods are acceptable and helpful in understanding the past as well as the present of a phenomenon.

1.6.3 Empirical Methodology

Empirical research is an experience-based research; it is done using observation and measurement rather than theory or belief.[76] In this method, data are collected through interviews, observation, and questionnaires from a particular target group. The data are then analysed to explain the result. Although the empirical method is not the traditional method of doing a legal research, the method is becoming more acceptable in legal scholarship. It is also increasingly influencing interdisciplinary approaches to the study of law.[77] Through this method, the researcher goes to the field of the research like in hard sciences, though instead of going to the laboratory, he goes to office or chambers or even library to analyse the result.

This research adopted doctrinal methodology and complimented it with the qualitative method as earlier stated. The reason for combining the two methods is that doctrinal is used to study the existing literature and the existing laws. Whether the laws are working or how are they practiced necessitate using the qualitative approach. The views and experience of the players are collected as data through interviews to test the weaknesses and strengths of the law. This can show whether there is the need for more laws or amendments to the existing laws. The qualitative method has proved to be the best complimentary method to doctrinal method in conducting this research because it is the method used to explore what has been hidden without exposing those behind the

[75] Sharrock A. Hughes, W. W. Sharrock. *The Philosophy of Social Research* (London: Rutledge, 2016), 1.
[76] Ellysa Cahoy, "Empirical Research in Education and the Behavioral/social Sciences,"2015. http://psu.libguides.com/emp. Accessed 10/7/2016
[77] Richard H. McAdmas & thomas S Ulen, "Introduction to Symposium: Empirical and Experimental Method in Law," *University of Illinois Law Review*, (2002): 791.

scene. These are the actors in the field of the study and how they practice. In this research doctors, are recruited from different department of medicine, lawyer and religious scholars.

1.6.4 Research Scope

This research is limited to the study of the practice of euthanasia in Nigeria. It is restricted to the definition of euthanasia by the World Health Organization, which includes both passive and active euthanasia. In this research Nigerian legal framework is examined. The laws examined include Section 33, 35 and 34 of the Nigerian Constitution 1999 (as amended), the Penal Code law of Northern Nigeria of 1959, the Criminal Code of 1916, Medical and Dental Practitioners Act 2004 and Rules of Professional Conduct for Medical & Dental Practitioners (Code on Medical Ethics) in Nigeria of 1995.

However, reference is made to other jurisdictions like Netherlands, Belgium, Australia and India, for example, with a view to studying their legal framework. Experience of these countries both positive and negative during the period of the practice is examined. The reason for selecting these countries as a point of reference is because euthanasia has been legalised and practiced for a long time. The likely drawbacks for legalising and practicing euthanasia is of great benefit to determining its practicability in Nigeria.

1.6.5 Types of Data

The study applied both primary and secondary data. Primary data is collected first. It comprises of the Constitution of Nigeria, statutes, decided cases and other policies and code of medical ethics. Most importantly the interview conducted with the actors in

the field to complement the doctrinal approach of the research. On the other hand, the secondary data come from scholarly written books and articles describing, interpreting and analysing the laws, be it in form of statutes or decided cases.[78]

1.6.6 Data Collection Methods

The study collected data relating to literature and other sources of law from the library through the body of laws, decided cases and rules of professional ethics regulating medical practice in Nigeria and other jurisdictions selected for the purposes of this research. The other primary data is the interview part which is used as a mechanism to support the primary data obtained from the body of laws, statutes, cases and code of ethics. The adoption of the interview is deliberate because it is most relevant to getting the required information to enable the researcher to answer the stated research questions. Categorically, the interview facilitated the collection of the perceptions and the views of the informants aside the laws and rules.

Literature indicated that there is no specific numbers of respondents that is required but the in-depth studies on the phenomenon as well as the quality of data gathered.[79] Although some scholars opined that there is the need to specify the number of respondents even in a qualitative research, some are of the view that the number can be between 12 to 60.[80]

The data was collected using semi-structured interview; the researcher personally conducted. This has given the researcher the advantage of interacting with the

[78] Suzanne E Rowe, "Legal Research, Legal Writing and Analysis: Putting Law School into Practice," 2016. At https://law.fiu.edu/wp-content/uploads/sites/21/2015/07/Suzanne-Rowe-LRW-article-2015-rev1.pdf. Accessed 10/7/2016

[79] Jennifer Mason, Qualitative Researching (London: Sage, 2002)135.

[80] Ormston R. Jane Ritchie, Jane Lewis, P.S.P.J. Lewis, C.M.N. Nicholls, Qualitative Research Practice: A Guide for Social Science Students and Researchers (London: SAGE Publications, 2013)118.

respondents and ease the research process of data collection. The interview questions comprise of demographic and the basic research interview questions. The questions were raised from the research question and research objectives. Description and the contents, as well as the type of questions, was distributed to the respondent before the interview session. The respondents consist of doctors who are in active medical practice, legal practitioners, patients and some religious leaders.

1.6.7 Legal Materials

Legal materials include both statutory and judicial authorities, both from the primary and secondary sources like statutes, codes, law reports, books, journal and other written materials.

1.6.8 Interview

The research adopted semi-structured interview, and these were conducted with some doctors, patients, lawyers and some religious scholars. The respondents (Doctors) were selected based on the suggestion of the Chairman Ethics Committee of Aminu Kano Teaching Hospital in Kano, Nigeria. This is after the application and payment of prescribed fees for ethical approval to the ethics committee of the hospital. The chairman of the committee suggested doctors from the Department of Medicine, Surgery and Intensive Care Unit. Religious scholars were included too, from each religion as well as patients from their sick beds. Legal practitioners were also part of the respondents to gather their views about the likely interpretation of certain provisions of the law in relation to the practice of euthanasia. In selecting the respondents, the emphasis was given to their professional experience, cooperation to conduct the interview. They are listed in the table below:

Table 1.1:
Profile of the Respondents

No	Respondents	Place or Interview	Rank Specialisation	Date
1	Respondents No 1	Murtala Muhammad Way Old Union Bank Building, Sabon Gari Kano	A senior lawyer with more than 25-years experience	12/3/2017
2	Respondents No 2	Zoo road Opposite Gas station Kano, from Enugu state South Eastern Nigeria	A senior Lawyer with 20-years experience	9/3/2017
3	Respondents No 3	Bayero University, Kano Rgiyar Zaki Buk Road, Kano	Associate Professor of law and a Senior Lecturer	16/3/2017
4	Respondents No 4	Senior Pastor with Catholic Church of God Sabon Gari Church Road	Senior Pastor with Catholic Church of God	12/4/2017
5	Respondents No 5	Islamic Scholar with Long experience in Islamic law and a lawyer	Daurawa Maiduguri Road	13/5/2017
6	Respondent No 6	Kano Teaching Hospital Department of Intensive Care Unit	Consultant Intensive Care Unit Aminu Kano Teaching Hospital	3/12/2017
7	Respondent No 7	Aminu Kano Teaching Hospital from Kwara State Zaria Road Kano.	Consultant Medicine with the end of life experience	17/3/2017
8	Respondent No 8	Aminu Kano Teaching Hospital Zaria Road Kano From Lagos.	Consultant Surgery Department	20/3/2017
9	Respondent No 9	Surgery Department Aminu Kano Teaching Hospital from Kano	A Professor of surgery with end of life experience	17/4/2017
10	Respondent No 10	Cristian from Okene Kogi state	Patient with terminal Cancer	13/3/2017
11	Respondent No 11	Cristian from Port Harcourt Rivers State	Patient with Kidney failure	13/3/2017
12	Respondent No 12	Christian Enugu, Enugu State, Nigeria	Patient with Cancer	14/3/2017
13	Respondent No 13	Muslim, Businessman Agege, Lagos, Lagos state	Patient with terminal Cancer	15/3/2017
14	Respondent No 14	Aminu Kano Teaching hospital Kano from Anambra State	Medical Doctor with the end of life experience	12/3/2017
15	Respondent No 15	Aliyu Umar & CO, Legal Practitioners Farm centre road	Legal Practitioner a Prosecutor to Medical and Dental Practitioners Tribunal	14/4/2017

There is no authority that specifies the number of interviews that is enough in a qualitative research, even where the issue is raised, the answer has always been depending on the quality of the explanation the respondent will be able to give,[81] the experience and how they have been dealing with the issue. On this basis, the above respondents were selected for this research. As mentioned earlier, the respondents are selected taking into consideration their ethnic and cultural background in order to have a fair reflection of the main cultural background in the country under consideration. The religious scholars are very important considering the religious nature of the issue and the society where this research is conducted. They are selected based on their knowledge and experience. The patients are the people personally affected and therefore most relevant to be respondents in order to hear their perception on the end of life issues. The patients were interviewed on the basis of their health problem as recommended by the respondent doctors. In selecting the patients religious, ethnic and cultural background was put into consideration to have some balance in the data collection.

Demographic data of the respondents were all taking after giving their informed consent to enable the researcher to compare their professional working experience. All the interviews were audiotaped and transcribed by the researcher himself although the work is tedious, however; it gave the researcher the opportunity to master the data and make it easier for analysis and also give the work more credibility. Ethics Committee of the Bayero University Teaching Hospital approved the research interview question before the interview to comply with the protocol of research involving human subject. The letter of approval is attached as Appendix D.

[81] Sarah Elsie Baker and Rosalind Edwards, "How Many Qualitative Interviews Is Enough ?," National Centre for Research Methods Review Paper, (2012): 1.

1.7 Data Analysis

This study applied the explanatory method of data analysis in which the researcher coded the data collected from all the respondents. Historical, philosophical, thematic, comparative, and explanatory data analyses were used to analyse the data collected. Thematic data analysis is a process of selecting, analysing and reporting themes from the data collected. It is used to organise and explain data sequentially.[82] Thematic data analysis is the best way to approach data collected in this research, especially because the themes in the research are identified.

On the other hand, historical, philosophical, comparative and explanatory data analysis is good having regard to the fact that countries that have legalised euthanasia have been practicing it for a long time, so reference to those countries is good for this research especially on the negative and positive implication of the practice to the country under study. Comparative analysis has been widely accepted to be one of the best tools for improving the law of a country. It is used to compare the result of the data collected and offer a comprehensive explanation regarding a particular phenomenon in one society and the factors influencing the existence or perception of that phenomenon from another society.[83] Using comparative data analysis guides the researcher in making a comparison on the practice of euthanasia in Nigeria and other jurisdictions. These methods of analysis assisted in extracting and analyzing from the interview the practice of euthanasia in Nigeria. It enabled the researcher to answer the research questions and achieve the research objectives.

[82]Brawn V. and Clerk V., "Using Thematic Analysis in Psychology," http://eprints.uwe.ac.uk/11735/2/thematic_analysis_revised. Accessed 21/6/2016.
[83] Thorne S, "EBN Notebook Data Analysis in Qualitative Research," Evidence-Based Nursing 3, no. 3 (2000): 3.

1.8 Limitation of Study

Research relating to euthanasia is very sensitive especially in the developing countries like Nigeria, where religious and cultural background play a pivotal role in the way of life. This makes some respondents refuse to talk about it, especially the patients and doctors' respondents. Doctors do not want to talk about what they term as illegal and a serious breach of medical ethics. They fear being implicated for telling what they know happens in practice. For example, one of the respondents a doctor cancelled the interview scheduled to be conducted in his office because he does not want to be recorded. However, this problem was overcome when the respondents were given assurance of their confidentiality and their view in this researched to be limited only to this research. Most of the patients are either in comatose or extreme ill health and it was a little difficult for the researcher to effectively collect the data.

1.9 Literature Review

This section of the research reviews scholarly works obtained in form of textbooks, journal articles and other secondary materials from the law archives. Thus, pave ways for the establishment of the theoretical as well as the practical gaps. The section equally explains and define some of the relevant terminologies applied in the thesis.

1.9.1 Relevant Terminologies

For the purposes of clarity, relevant and key terminologies such as euthanasia, types of euthanasia, palliative care, assisted death and other terms were defined as follows:

1.9.1.1 Euthanasia

Oxford Dictionary definition of euthanasia is very restrictive. It is defined as a gentle and easy death.[84] The definition omitted some important features of a good meaning of euthanasia, for example, terminal illness, voluntary or involuntary. However, according to the most recent dictionary meaning, euthanasia means the act of terminating the life of a person who is very sick or extreme old age to stop his suffering.[85]

Euthanasia originates from Greek referring to good death.[86] It literally means good death or any kind of easy death.[87] It is not limited to death caused by a doctor; it includes any kind of peaceful, gentle and easy death, without the involvement of accident or anything. Conventionally it is referred to as terminating the life of a patient or refusing to save life intentionally for the purpose of relieving patient from pain.[88] Euthanasia is also seen as an act that requires an independent party, usually, a doctor who ends the life of a terminally ill patient, either by withdrawing or withholding treatment of the patient or actively injecting him with lethal injection, morphine or potassium chloride.[89] Somerville is of the view that euthanasia shall be defined in a legalistic term as:

> "An intervention or non-intervention by one person to end the life of another person, who is terminally ill, for the purpose of relieving suffering, with the intent of causing the death of the other person. But an intervention does not constitute euthanasia when the primary

[84] Oxford English Dictionary "Euthanasia" Accessed 1/4/2016
[85] Cambridge Dictionary, *Cambridge University Press*, 2017, https://dictionary.cambridge.org/dictionary/english/euthanasia. Accessed 30/12/2017
[86] Boudreau J. D and Somerville Margret, "Euthanasia and Assisted Suicide: A Physician's and Ethicist's Perspectives," *Medicolegal and Bioethics*, (2014): 15.
[87] Josef Kure, *Euthanasia the " Good Death " Controversy in Humans and Animals*, (Croatia, Inteck, 2011), 37.
[88] Hilliad Bryan, "The Moral and Legal Status of Physician-Assisted Death: Quality of Life and the Patient-Physician Relationship," *Issues in Integrative Studies* 18 (2000): 47.
[89] Centre for Bioethics, "End of Life Care: An Overview," 2005.38 http://www.ahc.umn.edu/img/assest/26104/enfof life.pdf. accessed 31/3/2014

> intent is either to provide treatment necessary for the relief of pain or other symptoms of serious physical distress, or the none provision, or withdrawal of treatment is justified, in particular, because there is a valid refusal of treatment or the treatment is medically futile (that would have no physiological effect)."[90]

The learned professor tried to exempt the doctrine of double effect, refusing and withdrawal of treatment if there is a valid reason for doing so, like when the treatment is futile. However, it can be concluded that both have the same legal implication in a country like Nigeria.[91] For example, where crime, particularly the offence of murder will be proved by an act or omission, which the culprit has knowledge that his act or omission has the likely consequence of causing death. A doctor cannot escape from the criminal responsibility where he causes death.[92]

According to the World Health Organization (WHO),[93] euthanasia is the termination of life at the request of the patient or compassionate reason or refusing to prevent such death. In this definition, the WHO accepted the inclusion of withdrawal of life-saving treatment as part of euthanasia which contradicts the views of some countries. However, in this research withdrawal of life support is considered as euthanasia, because removing it will hasten death, therefore the definition given by the WHO is the one adopted in this research.

1.9.1.2 Types of Euthanasia

There are two major types of euthanasia among scholars in the field of medical ethics. That is active and passive euthanasia. Both are considered illegal in some jurisdiction while in some jurisdictions passive euthanasia especially in form withdrawal of life

[90]Margaret Somerville a, *Death Talk: The Case against Euthanasia and Physician-Assited Suicide*, (Montrea, McGill-Queen's University Press, 2001), 46.
[91] Obinuchi Chimezule, "Euthanasia in Nigeria," *Social Sciences Research Network*, (2015), 2.
[92] Section 221,222 Pena Code (Nigeria, 2004).
[93] World Health Organisation, "A Glossary of Terms for Community Healthcare and Services for Older Persons." 12

support is considered a normal medical practice depending on the case at hand. The following is the brief explanations of the different types of euthanasia.

1) Active Euthanasia

This refers to where a doctor terminates the life of a patient on the request of the patient using some agents like drugs or injection. It is active because the doctor intentionally terminates the patient's life.[94] For example, a doctor causes the death of a patient directly and on purpose where he gives an overdose of morphine or any morphine kind of drugs to hasten the death of his patient due to excruciating suffering and pain. Sometimes for the fear of being subjected to a burdensome medical procedure the life is terminated. It may also be in form of a lethal injection to intentionally cause death.[95] This is voluntary because it is based on the request of the patient.

Therefore, active euthanasia is only legalised in few countries in the world, for example Belgium and Netherlands. The countries have amended their criminal code to decriminalise euthanasia where certain requirements are satisfied. The problem in Netherlands, Belgium and Australia is protecting the vulnerable against abuse which is the fear of the opponent of the practice.[96] However, in Nigeria the criminal and penal code prohibit termination of life with or without consent. Therefore, if the practice will be recognised the differences of the culture and tradition of the society must be taken into consideration.

[94] Darji J. et al., "Euthanasia : Most Controversial and Debatable Topic." *National Journal of Integrated Research in Medicine*, 2, no 1 (2011):95.
[95] Adefarasin V O., "Euthanasia: An Act of Mercy or Murder?," *Journal of Arts and Contemporary Societies* 4, no. September (2012): 69.
[96] David Gibbes Miller and Scott Y H Kim, "Euthanasia and Physician-Assisted Suicide Not Meeting Due Care Criteria in the Netherlands : A Qualitative Review of Review Committee Judgements," *British Medical Journal (BMJ)*, 2017, 2, doi:10.1136/bmjopen-2017-017628.

2) Passive Euthanasia

This is different with active euthanasia. It is an omission to do something that saves the life of a patient.[97] It means withdrawing or withholding supporting measures and treatment.[98] In essence, it is deliberately omitting to act thereby allowing a patient to die. For example, refusing to resuscitate a terminally ill patient or turning off the artificial feeding tube.[99] It, therefore, means euthanasia does not only mean actively doing something that leads to the death of a patient, but failure to act when something could be done to save the life of the patient. The intention of the doctors is always important, whether is to hasten or let death occur. However, in the opinion of this researcher, the best definition of passive euthanasia is given in the most popular book *Final Exit*[100]:

> "Passive euthanasia, popularly known as "pulling the plug," it is the disconnection of medical life-support equipment without which you cannot live. It could be a respirator to aid breathing, a feeding tube to provide liquids and nutrition, or even the sophisticated use of certain drugs to stave off death."

Therefore, disconnection of the life support leads to death hence passive euthanasia is euthanasia having the same moral consequences as active euthanasia.[101] This has been made legal in India under some extreme conditions. One among the conditions is an application before a high court permitting the withdrawal of life support. While available literatures have shown that passive euthanasia is considered a normal

[97] Yousuf R. M. and A. R. Mohammed Fauzi, "Euthanasia and Physician-Assisted Suicide: A Review from Islamic Point of View," International Medical Journal Malaysia 11, no. 1 (2012): 63.
[98] Narendra Aladangady and Laura De Rooy, "Withholding or Withdrawal of Life Sustaining Treatment for Newborn Infants," *Early Human Development* 88, no. 2 (2012): 65.
[99] Darji et al., "Euthanasia : Most Controversial and Debatable Topic." *National Journal of integrated research in medicine* 2, no 3 (2011): 1.
[100] Derek Humphry, *Final Exit: The Practicalities of Self-Deliverance and Assisted Suicide for the Dying*, vol. 1 (New York: Dell Publishing, 2015),12.
[101] John Keown, *Euthanasia , Ethics and Public Policy An Argument against Legalisation*, vol. 1 (New York: Cambridge University Press, 2015), doi:10.1017/CBO9781107415324.004.

medical practice in some jurisdictions. Notably among the cases decided on this issue are *Tony Bland*[102] and *Quinlan* cases[103] decided in both UK and US respectively. However, the available literature in Nigeria do not show it is being practiced or its regulation being provided.

3) Indirect Euthanasia

This is a situation where a patient is given treatment the purpose of which is to reduce the pain, but the treatment has the effect of terminating the life of the patient.[104] This is euthanasia by implication because the doctor administers a certain drug that has the effect of hastening the death of the patient. The only difference is the main purpose of the treatment which is to alleviate pain. Death is an unavoidable consequence of the drugs. In active euthanasia, the intention is to terminate life. The effect of the drugs is known to the doctor; however, he does not intend such effect. In other words, the effect is just necessary if the pain should be controlled and managed.

4) Involuntary Euthanasia

In this situation life of the patient is terminated without the consent of the patient or his personal representatives. It may not be the wish of the patient to have his life terminated. It is only done with the belief that it is in his best interest or he is better off dead.[105] This will obviously be one of the reasons many scholars are against paternalism in medical practice because you do not have to assume the position of your patient, he shall have control over his treatment as a right. This type of euthanasia is

[102] Airedale NHS Trust v Bland, AC 789, 885, 789 (1993).
[103] Quinlan (In the matter of Karen), 10 335 (1975).
[104] Jennifer Edwards, "The Moral Step Back" (Aberystwyth University, 2011),96.
[105] Gail Merrill, "Attitudes On Euthanasia and Physician-Assisted Suicide Based on Age , Gender , Religion and Level of Education in Muskegon County" (Grand Valley State University Allendale, 2001):3.

usually considered as murder. It is autonomy and self-determination use to determine and control one's health issues and treatment. If the patient does not consent or request for it, is considered a violation of such rights. This is the fear of majority of the opponents of euthanasia that if voluntary euthanasia is legalised it will lead to involuntary termination of life in the name of compassion, relieving pain or even consider as part of treatment.[106] This is popularly known as slippery slope. The case will change from right to die to duty to die. People will be killed without their consent for whatever motive. The situation will be worst in countries perceived to be the victim of corruption and crimes.

5) Non-voluntary Euthanasia

This is a compulsory euthanasia because the person cannot stop or refuse the act, he lacks the capacity to either consent or denies consent. These patients are unconscious, mentally or emotionally incapable of taking a rational decision. The decision to terminate their lives will be determined by their caregivers and the relatives. Minors, in this case, are the best example. Recently euthanasia for children has been permitted in Belgium, what remains to be debated is the rationality and acceptance of such practice and who will be relieved or benefit from the action. This includes deformed and greatly retarded children.[107] Many patients are of an extreme old age which makes them to permanently lose their capacity to understand the natural consequences of their actions.[108] This means that an appropriate person should decide about the medical treatment for the patient on his behalf. This is where the living will be used in the

[106] Donald J. Boudreau and Margaret A. Somerville, "Euthanasia Is Not Medical Treatment," *British Medical Bulletin* 106, no. 1 (2013): 45.
[107] Majd T. Mrayyan, Bilal S.H. Badr Naga, and Prince Sultan, "Legal and Ethical Issues of Euthanasia : Argumentative Essay," *Education .and Training,* no. 200 (2012):30.
[108] Oniha Eraze and Mabel Oniha Osato, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria," *Nigerian Law Guru,* 20 (2015): 11.

countries where it is recognised, to save the patient from being acted upon contrary to his wishes.

1.9.1.3 Double Effect Doctrine

This is a principle that overlooks the risk of causing death arising from foreseeable, but unintended and unavoidable consequence in seeking for an important course.[109] This doctrine exempts a medical doctor from criminal charges where he administers pain-relieving drugs capable of hastening death with no intention to do so. According to this principle, it is acceptable to do an act that may likely produce a good and evil result if the evil result is not intended, although foreseeable.[110] Drugs that can hasten death may be administered to relieve pain if death is not the intention although it may likely happen. Although this concept is accepted in the West from various decisions of courts, there is no available literature found by this researcher on its acceptability and applicability in Nigeria.

1.9.1.4 Assisted Suicide

Assisted suicide is legally different from euthanasia. Euthanasia is acting directly by the doctor to cause death, while assisted suicide the patient carries the act himself but with the assistance of someone.[111] One acceptable argument that makes the difference is that in euthanasia doctors terminate the life on the voluntary request of the patient. However, in physician-assisted suicide, the patient is given the final act to terminate the life himself. He may decide after being granted the medication or lethal prescription not to take it. It is stated that physician-assisted suicide is better in terms

[109] Noah Lars, "Medical Device Law, Turn the Beat Around?: Deactivating Implanted Cardiac Assist Devices," *Williams Mitchell Law Review* 39, no. 1229 (2013): 8.
[110] Obi, "A Critical Appraisal of Euthanasia under Nigerian Laws." 13
[111] Strinic Visnja, "Argument in Support and against Euthanasia," *British Journal of Medicine and Research* 9, no. 7 (2015): 3.

of ensuring avoidance of abuse because the final act is left to the patient to execute.[112] However, this research is not concerned with assisted suicide but rather euthanasia.

1.9.1.5 Palliative Care

Palliative care is one of the major development in the medical practice. It is a practice where patient with terminal illness are provided with comfort care and control of symptoms of their illness. Palliative care according to the World Health Organisation[113] is:

> "The active total care offered to a person and that person's family when it is recognised that the illness is no longer curable, in order to concentrate on the person's quality of life and the alleviation of distressing symptoms. The focus of palliative care is neither to hasten nor postpone death. It provides relief from pain and other distressing symptoms and integrates the psychological and spiritual aspects of care. It offers a support system to help relatives and friends cope with an individual's illness and with their bereavement."

Palliative care is, therefore, a process of changing the quality of life of a patient and even his relatives. This is especially where the illness is considered not curable and recoverable. The prognosis is made early to know what step to take and how the patient is supposed to be improved.[114] Terminally ill patients are faced with serious physical and social challenges. Palliative care is an avenue where these challenges are giving special consideration. Is a process that deals with the management of pain and symptoms. It is believed that patient is requesting for euthanasia only in the absence of Palliative Care.[115] It is also seen as a medical practice that deals with care rather

[112] Dieter Birbacher Edgar Dahl, *Giving Death a Jelping Phandhysician-Assisted Suicide and Public Policy. An International Perspective*, vol. 144 (Neitherlamds: Springer, 2008):45.
[113] Organisation, "A Glossary of Terms for Community Healthcare and Services for Older Persons." 44 http://www.who.int/kobe_centre/ageing/ahp_vol5_glossary.pdf Accessed 17/1/2018
[114] Xavier Gómez-Batiste et al., "Identifying Patients with Chronic Conditions in Need of Palliative Care in the General Population: Development of the NECPAL Tool and Preliminary Prevalence Rates in Catalonia.," *BMJ Supportive & Palliative Care* 3, no. 3 (2013): 300.
[115] Omipidam B A. "Palliative Care: An Alternative To Euthanasia," *BMJ Supportive & Palliative Care* 3, no. 2 (2013): 229.

than cure. In this practice, the patients are made to understand that death is a normal process of life using spiritual and other guidance to make them as comfortable as possible.

However, the practice of palliative care is a new development at least in Africa.[116] It requires a special consideration to make it practicable. It requires money and people specially trained in the management of symptoms and pain. It is sequel to this problem that many see the legalisation of euthanasia as a failure to provide a good palliative care system.[117] This position will suggest that the problem of lack of palliative care system will be one of the reasons for legalising euthanasia. People are being left in extreme pain without good care, sometimes there is even no money for treatment.[118] These and many other problems make the need for amendment of the system in Nigeria.

1.9.2 Different Views about Implication of Active and Passive Euthanasia

Pattinson[119] gave different perspectives on the end of life decision and their legal implication, especially in countries that legalised euthanasia. Passive euthanasia like other types of euthanasia has the effect of terminating life. The difference is that in passive euthanasia nothing is actively done to hasten death as opposed to active euthanasia[120] where an agent is used to terminate life. This is the reason; some scholars

[116] Richard Harding and Irene J Higginson, "Palliative Care in Sub-Saharan Africa.," *Lancet (London, England)* 365, no. 9475 (2005): 1971.
[117] Maggie Hendry et al., "Why Do We Want the Right to Die? A Systematic Review of the International Literature on the Views of Patients, Carers and the Public on Assisted Dying," *Palliative Medicine* 27, no. 1 (2013): 13.
[118] Michael Erdek, "Pain Medicine and Palliative Care as an Alternative to Euthanasia in End-of-Life Cancer Care.," *The Linacre Quarterly* 82, no. 2 (2015): 128
[119] Pattinson Shaun Pattinson Shaun D, *Medical Law and Ethics*, 3rd ed. (UK: sweet and maxwell, 2011). 3rd ed,(UK, Sweet and Maxwell 2011), 528.
[120] Garrard E & Wilkinson S., "Passive Euthanasia," *Journal of Medical Ethics* 31 (2005): 65.

restricted the meaning of euthanasia where there is a direct action to terminate life.[121] They did not see withholding and withdrawing treatment as euthanasia. While some feel it includes action, omission or withdrawal of treatment.[122] Some scholars like Simskin[123] think there is a serious inconsistency in the situation. Lethal drugs (Potassium chloride) are used to hasten death. Withholding or withdrawing life-sustaining treatment and assisting the patient to self-administer such lethal drugs or injection all result into terminating life. Mishara and Weisstub[124] expressed surprise at the way academicians are confusing euthanasia with refusing treatment, and the "Double Effect" doctrine, to them euthanasia is only intentional act to cause death by a person usually a doctor for a compassionate reason.

However, even in the legal parlance, these actions could be related murder or homicide,[125] particularly in the Nigerian society where if the patient could not continue with life-saving treatment due to financial problem, necessity may warrant withdrawing it. This by implication amount to murder yet it is done. This gap in the Nigerian legal framework needs to be filled. In the view of Maria,[126] there is nothing ethically wrong in withholding and withdrawing of life-saving measures. It all depends on the situation, like when the treatment is giving no result. This is because the essence is to control symptoms and manage disease complication. However, if all these become a waste of time and resources, while the patient continues to suffer, withdrawing or

[121] Kassim, Alias, and Wan Muhammad, "The Growth of Patient Autonomy in Modern Medical Practice and the Defined Limitations under the Shari'ah."2
[122] Koch, "The Hippocratic Thorn in Bioethics' Hide: Cults, Sects, and Strangeness."46.
[123]Simskin T. Arielle, "Inconsistencies in the Treament of Physician-Assisted Suicide and Passive Euthanasia," Seton Hall Law, 2014, 3.
[124] Mishara Brian and Weisstub N. Devid, "Premise and Evidence in the Rhetoric of Assisted Suicide and Euthanasia," *International Journal of Law and Psychiatry* 36 (2013): 427
[125] Edelstein, *Hippocratic Oath*.(2013):2
[126] Manalo Maria C. Fidalis, "End-of-Life Decision about Withholding or Withdrawing Therapy: Medical,Ethics, and Religion-Cultureal Consideration," *Palliative Care: Research and Treatment* 7 (2013): 1–5. http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4147759/ Accessed 3/4/2016

stopping it is a viable option. For instance, a victim of stroke with bleeding and or severe head pain who is believed to have no likelihood of recovery, the mechanical ventilator will not benefit him, and it only keeps the man living biologically. In a situation like this, there is justification to withdraw ventilation.

Scholars disagree on the notion that doctors should assist patient to die a good and dignified death but be allowed to die from the natural consequences of his illness.[127] It is acceptable in trying to alleviate suffering to withhold or withdraw treatment that is not necessary. But it should not be acceptable to adjudge a patient for being of the low quality of life and therefore not worth living and intentionally hasten his death.[128]

Since many scholars disagree on withdrawing life-saving treatment, for example, removal of the ventilator or removing pacemaker[129] and stopping dialysis, a distinction between active and passive euthanasia is important. In addition to that, an institution in Australia where euthanasia was first legalised advised that hospital could without any ethical breach or commission of crime accede to a patient's request to turn off a ventilator because he or she finds it burdensome.[130] Nigerian Supreme Court in the case *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*[131] for

[127] John Keown, *Euthanasia , Ethics and Public Policy An Argument against Legalisation*, vol. 1 (New York: Cambridge University Press, 2015), 112.
[128] Anderson T. Ryan, "Always Care, Never Kill: How Physician-Assisted Suicide Endangers the Weak, Corrupts Medicine, Compromises the Family, and Violates Human Dignity and Equality," http://www.heritage.org/research/reports/2015/03/always-care-never-kill-how-physician-assisted-suicide-endangers-the-weak-corrupts-medicine-compromises-the-family-and-violates-human-dignity-and-equality. Accessed 28/3/2016.
[129] Maso- DJ MacQuoid, "Pacemaker and End of Life Decision," *South African Medical Journal* 95, no. 8 (2005): 556.
[130]Southern Cross Bioethics Institute, "Legalised Euthnasia in Australia," 2014. http://www.bioethics.org.au/Resources/Online%20Articles/Other%20Articles/LEGALISED%20EUTHASIA%20IN%20AUSTRALIA%20-%20Brian%20Pollard%27s%20fifth%20Document.pdf.Accessed 15/3/2016
[131] Medical and Dental Practitioners Disciplinary Tribunal v. John Emewulu Nicholars Okonkwo, LPPELR, 1999 (2001)213.

example also recognised the right to reject any kind of treatment even where it will lead to death. This is a clear signal for the need to revisit the laws in Nigeria.

Emiri[132] accepted the idea of withdrawing life support relying on the decision of *Auckland Area Health Board V. A. G*[133] that if a doctor thinks it is in the patient's best interest to die he lawfully can trigger euthanasia not by actively fostering death but by ceasing to prolong life by the withdrawal of treatment. However, Irish Council of Bioethics[134] accepted this idea only where the doctors realise that all medications are exercised in futility and the quality of life is low, then the support can be withdrawn without incurring any criminal liability. In essence, the Council is trying to draw a distinction between withdrawals of the treatment and actively hastening death by any positive action. It means in some instance, it will be lawful to withdraw if it is in the patient best interest, while it is a crime to actively induce death.

This cannot represent the true position in Nigeria, because, it will be difficult to be sure of the patient's best interest, especially that Africans and Nigerians in particular, do not like talking about death. It would have to be inferred from the conversations or lifestyle generally since Advance Directives is alien to African culture. Jackson[135] restricted his perception of Euthanasia to voluntary active euthanasia. According to him, unless doctors act to terminate life, it will not be euthanasia.

Elizebeth[136] opined that if the withdrawal of life support or treatment becomes a normal medical practice it will lead to involuntary passive euthanasia. This is the

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[132] Emiri .O. *Medical Law and Ethics in Nigeria.*(Lagos, Malthouse Press Limited 2012), 220.
[133] Auckland Area Health Board V. A. G, NZLR 235 (1993)1.
[134]Euthanasia, "Your Body, Your Death, Your Choice? Information Leaflet," http://www.rte.ie/science/euthanasia_leaflet.pdf. Accessed 20/3/2016.
[135] Jackson, Emily. *Medical Text, Cases, and Materials Law*. New York: Oxford University Press, 2006
[136] James Lucy Elisabeth, "The Withdrwal of Treatment: Working Paper in the Health Science."1,no.6(2014)http://www.southampton.ac.uk/assets/centresresearch/documents/wphs/LJWithdrawal%20of%20treatment.pf Accessed 16/4/2016

argument of the opponents of euthanasia. Believing that most of the time the decision to withdraw treatment is based on lack of quality of life, which nobody can measure with precision whether a person has a good quality of life or not. It will also be difficult to understand with certainty if the treatment of a patient is futile or even predict the time of his death. The example is in the case of Pullicino[137] where a 71-year-old man was removed from life support and expecting to die the next day but lived for fourteen months. Rachel[138] made an argument that letting a patient die by way of withdrawing food and hydration causes more harm than taking his life via lethal injection or overdose of morphine because that kind of death takes up to two weeks to materialise. Therefore, subjecting the patient through all series of suffering and pain is a violation of the right to dignity. This researcher adopted the definition of the World Health Organization because it incorporates every act or omission that may result in terminating life.

1.9.3 Factors Influencing the Quest for Euthanasia

Euthanasia like other concepts such as abortion is made legal or recognised based on the societal factors and in some situations necessities. A review of the literature indicated the influence, recognition and legalisation of euthanasia in Nigeria. For instance, quality of life, socio-cultural and other factors were discussed below. Again, further details on these factors are captioned in chapter five.

[137] Steve Doughty, "Top Doctor's Chilling Claim: The NHS Kills off 130,000 Elderly Patients Every Year," *Daily Mail*, 2012, http://www.dailymail.co.uk/news/article-2161869/Top-doctors-chilling-claim-The-NHS-kills-130-000-elderly-patients-year.html. Accessed 6/3/2018

[138] Rachels J, *Can Ethics Provide Answer? And Other Essays in Moral Philosophy* (Lanham: Rowman & Littlefield, 1997).35

1.9.3.1 Quality of life

Many scholars see lack of quality of life as a good ground for euthanasia; sometimes it is seen as a medical duty on doctors to withdraw all treatments and other life-supporting machines.[139] Quality of life is a serious issue that affects the patient's family and his care attendants. However, judging the quality of life of an individual is not an easy task, because good quality of life is relative. Jonsen[140] had proposed two ways to measure the quality of life of a terminally ill patient that is through Personal Evaluation and Observer Evaluation. Therefore, quality of life can be measured by the patient himself or a third party as an observer. It is observed that quality of life can change at any moment with the influence of economic condition not necessarily by the actual life experience of the patient. Therefore, quality of life is not determined by social mobility, not physical mobility, freedom from pain and distress, and the capacity to perform daily life activities. These situations normally happen where the prognosis is hopeless and medical interventions would amount to a fruitless attempt to save the life of the patient.[141] Doctors can withdraw even though it is very well known to them that their omission or acts will result in the death of the patient, and the legal community will not regard it as unlawful.[142]

Wildes[143] believes that when human life falls below a certain level, it becomes disposable because there is no essence of living with bodily life. It is not an acceptable

[139] Bryan Hilliard, "The Moral and Legal Status of Physician-Assisted Death: Quality of Life and the Patient-Physicina Relationship." *Issues in Integrative Studies*, 18, (2000),45.
[140] W. J Jonsen A.R., Siegler, M., and Winslade, *Clinical Ethics: A Practical Approach to Ethical Decision in Clinical Medicine*, 4th ed. (New York: McGraw-Hill, 1998),56.
[141] MacQuoid, "Withholding or Withdrawing Treatment And Palliative Treatment Hastening Death: The Real Reason Why Doctors Are Not Held Legally Liable For Murder." Medicine and law http//: www.samj.org.za. Accessed 23/3/2016
[142] Fidalis, "End-of-Life Decision about Withholding or Withdrawing Therapy: Medical,Ethics, and Religion-Cultureal Consideration." http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4147759/ Accessed 3/4/2016
[143] Keven Wildes and C Mitchell, Choosing Life: A Dialogue on Evengilium Vitae (Washington: Georgetown University Press, 1997), 113.

argument to Johnstone,[144] because human life is sacred, taking it is wrong, euthanasia is taking life which is also wrong. According to Najimudden,[145] there will be abused by doctors and relatives. Relatives with selfish interests like the interest of inheritance and corruption may influence doctors to compromise in the name of lack of quality. Right to die may be substituted with the duty to die. In discussing the quality of life is divided into two, ordinary and extraordinary treatments.[146] The two treatments are further sub-divided into three: beneficial, useless and doubtful. Beneficial benefits the patient but very burdensome. Useless treatment also is ineffective and does not benefit the patient. In case of doubtful treatment, the treatment may either be beneficial or useless. Treatments that are extraordinary are expensive, too burdensome and useless at the same time not obligatory. This is trying to justify withdrawal of treatment in terminal illness because the treatment is extraordinary and therefore useless.

1.9.3.2 Socio-cultural Factors

Some Yoruba[147] traditional practices in Nigeria believe that death is more honourable than the long experience of pain and suffering due to chronic disease.[148] While some other groups allow intentional killing of children that have a physical deformity. Some societies consider babies bringing bad luck or abomination to the community or the old tradition of killing twins because they are considered as witches although abolished for a long time.[149] These types of practices are suspected to be in existence in some parts of Nigeria. It will be assumed that some of these societies will be likely to accept

[144] Megan-jane Johnstone, Bioethics and Physician-Assisted: Killing or Caring? (New York: Paulist Press, 1994),37.
[145] Najimudden M., "Euthanasia," *Webmed Central Medical Ethics* 4, no. 2 (2013): 2.
[146] Erica Borgstrom, "Ordinary Medicine: Extraordinary Treatments, Longer Lives and Where to Draw the Line by Sharon R. Kaufman," *Anthropology & Medicine* 23, no. 3 (2016): 361.
[147] Yoruba is one of the three dominant tribes from the South-Western Nigerian.
[148] Bambose O., "Euthanasia; Another Face of Murder," *International Journal of Offender Therapy and Comparative Criminology* 48 (2004): 111.
[149] Odia O.J. "The Relation between Law, Religion, Culture and Medical Ethics in Nigeria," *Global Bioethics* 25, no. 3 (2014): 164.

euthanasia then other societies. Cultural and religious diversity are some of the factors influencing the recognition of euthanasia as a pain reliever to the terminally ill patient.

A study conducted in 33 European countries has shown that weaker religious belief and people with higher educational background have a higher tendency of accepting the practice of euthanasia.[150] In another observation study in Europe show that culture and religion influence end of life practice among both patient and doctors.[151] The study[152] showed that doctors with different religion approach end of life issues differently, undoubtedly they unanimously do not support active euthanasia. However, it must be noted that although the practice of euthanasia is accepted and legalised in some countries[153] it is still a crime in the majority of countries in the world.

A study[154] has shown that different factors will influence the practice of euthanasia in Nigeria. For example, religious reason, although Islam and some Catholic followers accepted the withdrawal of fruitless treatment. Some scholars called for the legalisation of euthanasia to give human rights full recognition and put aside the cultural and religious factors negating the practice.[155] When the Nigerian Supreme Court in the case *MDPDT v. Okonkwo*[156] recognised the right to refuse medical treatment, passive euthanasia may be presumed to be tolerated in Nigeria. The right is

[150] Cohen Joadian, "European Public Acceptance of Euthanasia; Socio-Demographic and Cultural Factors Associated with the Aceptance of Euthanasia in 33 European Countries," *Social Science & Medicine* 63 (2006): 743.
[151] Sprung L. Charles, "The Importance of Religious Affiliation and Culture on End of Life Decision in European Intensive Care Units," *Intensive Care Medicine* 33 (2007): 1732
[152] Emily Tomlinson and Joshua Stott, "Assisted Dying in Dementia: A Systematic Review of the International Literature on the Attitudes of Health Professionals, Patients, Carers and the Public, and the Factors Associated with These," *International Journal of Geriatric Psychiatry* 30, no. 1 (2015): 10.
[153] Vacco v. Quill, US, 793 (1997) 521.
[154]Bamgbose, Oluyemisi. "Euthanasia: Another Face of Murder." *International Journal of Offender Therapy and Comparative Criminology 48*, no. 1 (2004): 112.
[155] Kanchan, Atreya, and Krishan, "Aruna Shanbaug: Is Her Demise the End of the Road for Legislation on Euthanasia in India?" *African Journal of International and Comparative Law*, 18,2 (2010) 170
[156] Medical and Dental Practitioners Disciplinary Tribunal v. John Emewulu Nicholars Okonkwo, LPPELR, 1999 (2001)213

accepted on the recognition of the right to practice a religion of any one's choice. However, this may not be the correct position because withholding or withdrawing treatment is not the same as refusing treatment. In the former treatment has started already thereby imposing a duty of care on the doctors, so any omission leading to death will amount to a crime. Therefore, any amendment to the legal framework must take into consideration religious and cultural factors.

As well euthanasia is unknown mostly to the Nigerian culture. Most Nigerian cultures have the restriction of anything regarding life and death issues. Some cultures found the discussion about death as offensive and annoying.[157] All issues of the death of one member will affect the entire family unlike the Western culture built on the Nuclear Family structure which promotes individual right and responsibilities. Patients in extremely ill health, who are likely going to die, are encouraged to keep praying as part of the preparation to depart from this world, not to do anything to accelerate the death in the name of the fear of pain or quality of life. Both Muslims and Christians believe that God is the divine doctor and the healer of body and soul through prayers.[158]

1.9.3.3 Economic Factors

Economic hardships such as abject poverty and lack of enough public funding and facilities in the healthcare institutions or the available healthcare are expensive can influence the amendment of the law as a matter of necessity. The following will be a brief discussion of these factors and their negative or positive effect on the practice of euthanasia in Nigeria.

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[157] Uzochukwu Uzoma Aniebue and Tonia Chinyelu Onyeka, "Ethical, Socioeconomic, and Cultural Considerations in Gynecologic Cancer Care in Developing Countries," *International Journal of Palliative Care*, (2014):35.

[158]Osato Oniha, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria." http://www.healthcarechaplaincy.org/userimages/doc/Cultural%20Dictionary.pdf 26/6/2016

1) Lack of Healthcare Facilities

Medical facilities all over the world are very expensive. This, therefore, makes providing them with a problem especially in the developing countries like Nigeria. Chinawa[159] believes that even manpower communication is enough to create the problem in the healthcare sector in Nigeria. Menizibeya[160] looks at the problem of healthcare as poorly developed and no adequate functional surveillance system. Osakede and Ijimakinwa[161] link the problem of healthcare in Nigeria to health workers strike which is part of the failure of the government to be sensitive to the healthcare facilities for its citizens. According to Uche,[162] failure of the government to provide adequate facilities and manpower in the Nigerian hospitals expose people to the danger of death. On the other hand, World Health Organization (WHO)[163] traces the problem of healthcare in Nigeria to the decade period of the military regime. Healthcare problem can be traced to the failure of government and its agencies to provide hospitals with adequate healthcare facilities and personnel thereby leading to more number of deaths in the country. This is a violation of the Nigerian Constitution, although is a right which is unenforceable.[164] Intensive Care Unit (ICU), for example, is one of the departments where critically ill patients are admitted. Survival of patient in the unit

[159] Josephat M. Chinawa, "Factors Militating against Effective Implementation of Primary Healthcare (PHC) System in Nigeria," *Annals of Tropical Medicine Public Health* 1 (2015):12

[160] Menizibeya Osain, "The Nigerian Healthcare System: Need for Integrating Adequate Medical Interlligence and Surveillance System," *Journal of Phermacybioallied Science* 3, no. 4 (2011): 2.

[161] Osakede K.O & Ijimakawa, "The Effect of Public Sector Healthcare Workers Strike: Nigeria Experiance," *Review of Public Administration and Management* 3, no. 6 (2014): 5.

[162] Ijeoma B. Uche, Ukala A Uche, "Building a Solid Healthcare System in Nigeria: Challenges and Prospects," *Academic Journal of Interdisciplinary Studies* 3, no. 6 (2014): 3.

[163]World Health Organization, "The Nigerian Health System,"2014. http://www.who.int/pmnch/countries/nigeria-plan-chapter-3.pdf Accessed 26/4/2016

[164] Chapter II of the 1999 Constitution particularly Section 17 (3) (d): "The state shall direct its policy towards ensuring that- there are adequate medical and health facilities for all persons; However, Section-6 (c) makes it an enforceable law that the powers of the judiciary "Shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in chapter II of this constitution"

requires life-supporting machines. Like feeding tube, respirators or ventilators. However, in Nigeria, these machines are not adequately available. For example, a hospital that serves about 20 Million people has only 4 beds space in that ICU. Therefore, where you have more than four patients requiring life support some will have to compromise for others.

2) High Cost of Medical Care

Healthcare services is expensive in Nigeria, there is no free hospital or free treatment. 80 percent of Nigerians are poor,[165] this makes the majority of the citizens to stay at home when faced with serious illness. One of the pandemics in Nigeria today is kidney failure. The illness requires transplant and frequent dialysis. The cost of a transplant is higher while dialysis is also expensive costing about 25 to 50, 000 Naira per session. Therefore, a patient will be forced to withdraw treatment for lack of money. Recently there is an introduction to Healthcare Insurance Scheme (NHIS).[166] It was introduced to ease the problem of expensive healthcare services in Nigeria. However, the coverage of the scheme is very negligible.[167] The scheme only covers federal workers and even the federal workers only a few are registered. Therefore, where a patient is diagnosed with a very serious illness poverty will be a problem. Many cannot afford to sustain a patient with terminal illness because healthcare service is very expensive especially toward the end of life generally.[168]

[165] National Bureau of Statistics, "National Poverty Rates for Nigeria: 2003-04 (Revised) and 2009-10," vol. 04, 2009.
[166] Alex E Asakitikpi, "Healthcare Delivery Targets and the National Health Insurance Scheme Limitations in Nigeria," *International Journal of Business and Social Science* 7, no. 3 (2016): 55–64.
[167] National Health Insurance Scheme (NHIS), "Scope of Coverage," https://www.nhis.gov.ng/scope-of-coverage/2017. Access 12/10/2017
[168] Jelle Van Gurp et al., "Telemedicine's Potential to Support Good Dying in Nigeria: A Qualitative Study," *PLoS ONE* 10, no. 6 (2015):2.

Therefore, patients with terminal illness or any serious disease and cannot sustain the treatment, the only option is to withdraw and surrender to death.

1.9.4 Legal Framework for the Practice of Euthanasia in Nigeria

Medical ethics is one of the integral part of medical practice. It relates to the discipline, obligation of doctors and healthcare institutions in their relationship with patient.[169] However, ethical regulation is not enough to regulate the practice of euthanasia in Nigeria. The legal framework is so inadequate that there is the need for improvement. Only the code of medical conduct prohibits the practice clearly. Both Penal and Criminal Code only prohibit murder and termination of life.[170] The law does not consider motive or consent as an excuse for terminating life. However, provision of the Criminal Code has more closely related provision against euthanasia.[171] It is from these provisions that the practice is considered illegal and a crime.[172] For example, Section 222 of the Penal Code prohibit any act that can likely cause the death of any person. Therefore, where any doctor or any interloper has knowledge that his action is likely to cause the death of his victim he will be guilty of culpable homicide punishable with death. While Section 311 and 316 of the Criminal Code criminalise any conduct that could hasten the death of any person either through the use any substance or any other means.

[169] Onyeka, "Ethical, Socioeconomic, and Cultural Considerations in Gynecologic Cancer Care in Developing Countries." *International Journal of Palliative Care* vol.14 (*2014):6.*
[170] Chimezule, "Right to Die (Euthanasia) in Nigeria." 22.
[171] Sani Ibrahim Salihu, Yuhanif Yusof and Rohizan Halim "Legal Application of the Offence of Murder and Euthanasia in Nigeria."7.
[172]Omipidan Bashiru Adeniyi, "Legalising Euthanasia: With Special Reference to Nigeria, Dutch(Netherlands) and Islamic Law" (International Islamic Univerisities Malaysia, 2010), 123.

However, some scholars[173] are of the view that provision of the Constitution dealing with the right to life under Section 33, dignity of human person or personal liberty under Section 34 and 35 respectively should be read together to bring its legality. This is the view of the minority among scholars not only in Nigeria but Africa in general.[174]

However, the scholars holding the view about allowing the practice in Nigeria, do not look at the sociocultural and religious difference in Nigeria. Even where such practice is allowed or permitted is because of the sociocultural and religious orientation of those societies. Therefore, studying these factors from the Nigerian context will contribute more to the literature in this area.

1.10 Conclusion

Background of this research shows that is a long existing debate, controversies and different views about the practice of euthanasian world over. The issue has received legislative support in some countries like Australia, Netherlands, and Belgium. In India, the issue was settled through the judicial activism by the Supreme Court of India in the case of *Aruna Shabaug v. Union of India*.[175] However, in the countries of Nigeria and Malaysia, the issue remains illegal and a crime. However, in Nigeria, there are overwhelming factors that influence its practice. For example, lack of healthcare facilities and the high cost of healthcare are among the factors. Sometimes is on the religious ground that a patient may prefer to die than to go contrary to his belief like we have seen in the case of *MDPDT v. Okonkwo* decided by the Supreme Court of Nigeria, which recognises the right to refuse lifesaving treatment.

[173] Osato, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria." 23.
[174] Masaka Dennis, "A Theoretical Defense of Voluntary Euthanasia in the Context of AIDS," *Journal of Sustainable Development in Africa* 12, no. 5 (2010): 52.
[175] Aruna Shanbaug v. Union of India & other. SCC, 4 (2011)454.

This chapter discussed the background of the research, the problem statement and then raised research questions and the expected objectives to be achieved during the research. In discussing the significance of the research, it is shown that research on the practice of euthanasia using empirical method in Nigeria is long overdue. This in view of the existing literature indicating that there is a hidden practice of euthanasia in the majority of countries around the world. The methodology adopted is socio-legal research, where the doctrinal method is complemented with empirical study. The method is the best for testing the weaknesses and strength of the law on a phenomenon. This makes the contribution of the research very significant. The reason for adopting this method is because doctrinal method alone will not provide satisfactory answers to the research questions. Therefore, in order to achieve the objectives of this research, major actors in the field of medical practice, lawyers, patients and even religious scholars were interviewed in order to achieve the objectives of this research.

The interview method adopted in the research is semi-structured. The reason is that it enables the researcher to ask for further clarification or explanations from the interviewee. Sometime in the discussion, some issues may be raised which may require further questioning. The interaction assist the researcher to have a deeper understanding of the subject after the interview with the respondents.

In the literature, most of the important terminologies in this research have been defined based on the views of some scholars. At the same time in the literature review factors that influence the practice of euthanasia in Nigeria were pointed out with the view to access the extent of their influence on the subject. It is found that these factors may have a serious influence on the acceptance of this practice in Nigeria.

CHAPTER TWO:
THE DEVELOPMENT OF EUTHANASIA IN NIGERIA

2.1 Introduction

This chapter discusses the evolution and development of euthanasia as well as its controversies among doctors, lawyers, academic scholars and even politicians. These stakeholders are mostly confronted with the argument to make a law allowing its practice. The concept of euthanasia has gained acceptance in different jurisdictions. The struggle through the judicial process got its root during the 20th and 21st century, where supporters of euthanasia chose to advocate for its practices via judicial activism. In countries like Netherlands, Belgium, and Australia, voluntary active euthanasia is legalised.[176] But in places like India and England passive euthanasia is accommodated under certain restrictions. Historical events influenced the recognition and legalisation of euthanasia. The following will be the brief historical development of the concept.

2.2 Historical Evolution of Euthanasia

In view of its long historical antecedents and how history influenced the practice of medicine, industrial revolution brought about technological advancement that affects the question of life and death.[177] It also influenced cure and treatment of a disease or even total removal of damaged organs and replacement thereafter.

[176]Peter Hudson et al., "Legalising Physician-Assisted Suicide And/or Euthanasia: Pragmatic Implications," *Palliative and Supportive Care* 13, no. 5 (2015): 1399.
[177] Stuart J. Murray and Dave Holmes, "The Perils of Scientific Obedience: Bioethics under the Spectre of Biofascism," in *Critical Interventions in the Ethics of Healthcare : Challenging the Principle of Autonomy in Bioethics* (England: Ashgate Publishing Limited, 2009), 114.

These developments also affect people's perception of life and death.[178] Therefore, euthanasia becomes one of the most controversial subjects ever recorded in human history.[179] The controversy also influenced the interpretation of the law on certain concept particularly euthanasia. This subheading will trace the historical development of euthanasia which started from the concept of suicide, euthanasia and physician-assisted suicide. The development started from acceptance to total condemnation, and lastly to liberal views, where some countries recognised and even legalised it, as part of human rights.

Euthanasia has been in the history from time immemorial. Literature indicated that during the Greek civilian euthanasia was used literally but the modern application started in the recent time.[180] It means a straightforward way to cause death and with a pleasant as well as the happy state of mind. These do not require assistance to die or killed for terminal illness.[181] Therefore the method used, the rational and the societal response are completely different from the present generation. This pre-existed the Christian era when it was condoned by the people of Greek and Rome.[182]

However, the technical meaning of euthanasia started during the 19th century.[183] Although euthanasia was discovered even during the ancient time, acceptance and recognition of assisted to death in relation to terminal illness originated from some

[178] World Health Organisation, "A Glossary of Terms for Community Healthcare and Services for Older Persons."
[179] Jones D. Gareth and Whitaker I Maja, *Speaking for Dead: The Human Body Biology and Medicine*, 2nd ed. vol. 1 (Farbham: Ashgate Publishing Limited, 2015),16.
[180] Vaibhav Goel, "Euthanasia – a Dignified End of Life!," *International NGO Journal* 3, no. 12 (2008): 224
[181] Zahedi, Larijani, and Bazzaz, "End of Life Ethical Issues and Islamic Views." *Journal of Policy History* 25, no.1(2013):16
[182] Cristina L. H Traina, "Religious Perspectives on Assisted Suicide," *The Journal of Criminal Law and Criminology* 88, no. 3 (2016): 1147–54, http://www.jstor.org/stable/3491364. Accessed 6/3/2018
[183] Aksoy, "Some Principles of Islamic Ethics as Found in Harrisian Philosophy."14.

philosophical principles in Greek and Rome before the coming of Christianity.[184] Physical health was the reason because the society believed that nothing counts without health. Acceptance of physical health as a ground for suicide was recognised by Greek and Roman scholars.[185] However suicide was unacceptable among the physically healthy people, it was an insult to gods or an act of ingrate. Plato[186] was among the earlier supporters of euthanasia, he believed that medically challenged people shall be allowed to refuse medical treatment that will only prolong life not cure the disease especially when there is no more quality of life or the patient is useless to the state. Some great men in Greek committed suicide due to one injury or the other, for example, Zeno, the founder of Stoics committed suicide because of the foot injury.[187] For the Romans, history has shown that they condoned suicide for a different reason to entertain people, like Peregrinus who publicly announced his intention to kill himself just to be famous.[188]

The law in both Greek and Rome supported suicide and did not consider it as punishable offence unless the victim is a soldier or a slave. Under the Roman law if anyone kills himself without such justification his property is deemed forfeited.[189] These were societies that have no regard for custom or culture and there was no religious consideration at the period. Therefore, the practice during that period is that those who assist one another to kill himself were blameworthy because individuals

[184] Joachim Cohen et al., "European Public Acceptance of Euthanasia: Socio-Demographic and Cultural Factors Associated with the Acceptance of Euthanasia in 33 European Countries," Social Science and Medicine 63, no. 3 (2006): 743.
[185] James E. Mark, Source Book on Medical Law, Library, 2nd ed. (London: Cavendish Publishing Limited, 2002),9.
[186] Brad Greene, "Plato & Legalizing Euthanasia," 2015, https://prezi.com/5exombh0khav/plato-legalizing-euthanasia/.https://prezi.com/5exombh0khav/plato-legalizing-euthanasia Accessed 30/12/2017
[187] Darji et al., "Euthanasia : Most Controversial and Debatable Topic." 24
[188] Barry Rosenfeld, *Right to Die and Assisted Suicide*, 1st ed. (London: American Psychological Association, 2002). 207
[189] Ibid

were only allowed to take their life if they have health challenges. Doctors were also free to assist patients who wish to die. They assisted their patients to die by giving them poison or cutting of the veins to facilitate a painless death. This will be contrary to the view that technology is what brought about euthanasia and physician-assisted suicide, history showed that the practice was the order of the day in the pre-civilization period.

Thus, many factors influenced the recognition of euthanasia, especially the followership and teaching of some ancient scholars (Plato, Aristotle, and Socrates).[190] They rejected active euthanasia and recognised passive euthanasia in the name of withholding or withdrawing treatment where it is futile.[191] Their reason was that life belonged to the society and human could not act freely or deal with his life anyhow he so wishes. In other words, they did not believe in personal liberty or individual freedom. Therefore, euthanasia was perceived to have negative connotations in the society.[192] Medieval's political and legal principles also influenced the acceptance of euthanasia during that period.

The widespread of Christianity influenced the postulations of philosophers such as Saint Augustine and Thomas Aquinas. Their attitude towards euthanasia changed due to religious influence. Christianity vehemently opposed euthanasia and made sure it was reflected in the civil law as an unlawful practice. Corroborating the above notion, respondent number four during the interview stated that:

> "*I know that one of the commandments God has given is "thou shall not kill" and God did not make any exceptions, I know an instance*

[190] Rehmann-Sutter Christoph Marcus Düwell, Bioethics In Culturalcontexts (Netherlands: Springer, 2006):46.
[191] John D. Papadimitriou et al., "Euthanasia and Suicide in Antiquity: Viewpoint of the Dramatists and Philosophers," *Journal of the Royal Society of Medicine*, no. 1 (2007): 25,
[192]Gabrielyan Arman, "The Phenomenon of Euthanasia in Criminal-Legal, Criminological and Medical-Biological Aspect" (Phd Thesis, Regas Stradina Universtate, 2014),15.

> *of war yes is either you kill the enemy or the enemy kills you, outside that if we are to follow the injunction of God there is no reason to take life. when it comes to the issues of euthanasia because somebody is going through pains and suffering I think is not justifiable, because there is a time such decision is simply taken not with the consent of the patient, I remember reading somewhere I cannot exactly quote, it says life was meant to be lived and curiosity must allow life to live with fullest. Now following from that statement, it means that life was meant to be lived until God decides to take it, ordinarily, no man shall take a life except above*."[193]

The above respondent is a religious leader adumbrating on the above position on euthanasia from the Christian point of view and this view is what was reflected on the common law of England and other Commonwealth countries Nigeria inclusive. This indicated the view of those who opposed before and during the 19th century.

An important remark was made by Pope Pius XII in 1957 while addressing the conference of an anesthesiologist.[194] He opposed active euthanasia and insisted that the Catholic family will oppose subjecting a patient to an extraordinary treatment involving the use of life-supporting machines in hopeless cases. Pope also allowed passive euthanasia under the doctrine of "Double Effect" where pain-relieving drugs can be used to manage pain even if it will hasten death.[195]

The history of euthanasia was linked to Second World War with the Nazi practice of euthanasia for "life unworthy of life"[196] which started with mentally disable children and later mentally disable adult popularly known as "Aktion T4".[197] It was carried out

[193] Interview with Respondent Number four a Pastor at his Office 12/4/22017
[194] Pope Pius XII, "The Prolongation of Life: An Address to an International Congress of Anesthesiologists," 1957, https://repository.library.georgetown.edu/handle/10822/1028040?show=full. https://repository.library.georgetown.edu/handle/10822/1028040?show=full Accessed 8/3/2018
[195]Stephen Davies, Kathleen Marie, and David E Cooper, A Companion to Bioethics Blackwell Companions to Philosophy, ed. Helga Kuhse and Peter Singer, 2nd ed. (West Sussex: A John Wiley & Sons, Ltd., Publication, 2009),23.
[196]Hawkins Michael, "Compulsory Death: A Historiographic Study of the Eugenics and Euthanasia Movements in Nazi Germany" (East Tennessee State University, 2010),3.
[197]Susan Benedict and J Kuhla, "Nurses' Participation in the Euthanasia Programs of Nazi Germany.," *Western Journal of Nursing Research* 21, no. 2 (1999):246.

for economic reason aimed at sparing the state from spending on useless people and the biological belief that only the healthy shall reproduce.[198] This history has made a very good reason for the opponent of euthanasia. It was believed that legalising euthanasia will take the society back to the period of Aktion T4 and it will be worst.[199] Although the opponent countered this argument that euthanasia of this period is a programme with the consent of a competent adult, and in the case of incompetent with written Advance Directives.[200]

Discovery of analgesic and morphine use to manage pain and manage the dying process, make doctors to be encouraged to use morphine as a pain reliever, but overdose was avoided because it has the effect of hastening death.[201] This control and management of pain reawaken the debate for euthanasia among lawyers, doctors, religious leaders and a lot of human rights groups. Lawyers and other human rights groups advocated for the right to self-determination privacy and family life. A lot of civil right organisation started evolving clamouring for the right to die mostly from Europe and America. Some of these groups are Society for Right to Die with about 147,000 members then and the World Federation of Society for the Right to Die initiated 1980.[202] This is the period when all attempt to get euthanasia legalised failed

[198] Lan Dowbeggin, "From Sander to Schiavo: Morality, Partisan Politics, and America's Culture War over Euthanasia, 1950–2010," *Journal of Policy* 21, no. 13 (2013): 5.
[199]Ben A. Rich, *Strange Bedfellows: How Medical Jurisprudence Has Influenced Medical Ethics and Medical Practice* (New York: Kluwer Academic Publishers, 2002),40.
[200] Advance directive is a document prepared for or by an individual with legal capacity where he gives instructions pertaining to his healthcare in case he lost capacity to give instructions. The directives are divided into two: (1) Proxy Directives the decision is taking by one or more persons on behalf of the patient; Instructional Directives contains an instruction about the type and extent of the healthcare. Instructional Directives is called a "living wills" and Proxy Directives as "Durable Powers of Attorney for healthcare".
[201] Murkey P. N and Konsam Suken Singh, "Review Article Euthanasia (Mercy Killing)," *Journal of Indian Acad Forensic Medicine* 30, no. 2 (2008):92.
[202] Raymond Whiiting, *A Natural Right to Die: Twe Enty-Three Centuries of Debate*, vol. 1 (London: Greenwood Press, 2015),358.

through the legislative process. The struggle shifted to the judicial system, where numbers of cases were decided for or against euthanasia.

History of euthanasia relating to the bioethical issue will never be completed without Hippocrates the father of modern medicine and the author of Hippocratic Oath.[203] It is like the law book of medical practice, which every doctor must swear to abide by. History has shown that before the Hippocrates the practice of medicine has no ethical regulation. Doctors were free to take a life if there is justification, especially terminal illness. After the coming of Hippocrates standard was set for medical practice and medical practitioners, the Oath said: "I will not give a deadly drug to anybody if asked for it, nor will I make a suggestion to that effect"[204]

It was argued that although Hippocrates principles were not the overwhelming view of the doctors at the time, yet it was a principle considered to be the backbone of medical practice up till today. It was a principle that coincided with Muslim and Christian ideology about Euthanasia. However, even during that period, against all religion and law doctors hasten the death of their dying patient with drugs and other means. The 20th century witnessed a lot of changes, changes to human value, socio-economic changes, philosophy, culture and even science. The period disconnects with the past with regard to human culture and science. During this period the train completely shifted to individual body and his interest. The individual got unlimited freedom thereby bringing about the idea of euthanasia again.[205]

[203] Stuart Beresford, "Euthanasia, The Right To Die And The Bill Of Rights Act," *The Human Rights Research Journal* 3 (2005):5.
[204] Ludwig Edelstein, *The Hippocratic Oath, Text, Translation and Interpretation* (Baltimore: the Johns Hopkins Press, 1943),43.
[205] Anne Beryl Ryan, "Making Sense of Euthanasia A Foucauldian Discourse Analysis of Death and Dying" (At Massey University, Palmerston North, New Zealand Anne, 2014),69.

It was during the 20th century that voluntary euthanasia started to be recognised to the extent of getting it presented before legislative bodies for consideration. The state of Ohio in 1906 attempted to legalise voluntary euthanasia, making a case that if the patient request and the other doctors agreed about the patient medical situation; they can give him a painless death. The Bill called it euthanasia; perhaps it is the first deliberate attempt to recognise and accept death as a legitimate process to relieve pain.[206] The Bill was presented with serious opposition, mostly on the moral and religious ground especially preserving the sacred nature of human life. Other reasons presented by the opponent of euthanasia are a slippery slope, damaging doctor-patient trust, subjecting vulnerable to the risk of having their lives terminated without consent.

In Great Britain in 1930s a Bill was initiated by the Health Officer. British Voluntary Euthanasia Society was formed to assist the Bill as the first right to die organisation, but the Bill was not successful. Since then until 1950 no euthanasia Bill was presented before the Parliament again.[207] Euthanasia gained momentum that in opinion polls about 40 percent of Americans and 69 percent of Britain were in favour of euthanasia for terminally ill under certain situations.[208] If the United State being the champion of human rights in the world could not allow the practice of euthanasia for the terminally ill and consented patients, it should not be a surprise if the practice is rejected in the majority of the countries around the world.

In the 70s right to die movement started having large followers and recognition in the United State. Discussion over death and dying process became the order of the day.

[206] Hazel Biggs, *Euthanasia, Death with Dignity and the Law* (Oxford: Hart Publishing, 2001), 89.
[207] Strinic Visnja, "Argument in Support and against Euthanasia," *British Journal of Medicine and Research* 9, no. 7 (2015): 3.
[208] Jocelyn Downie, "Permitting Voluntary Euthanasia and Assisted Suicide: Law Reform Pathways for Common Law Jurisdictions," *QUT Law Review* 16, no. 1 (2016): 84.

Bills attempting to legalise euthanasia were brought in Montana, Florida, Washington and Oregon but none could see the light of the day because the debate over it has already been stifled.[209] However, medical technologies continue to change people's perception of death with many people dying in the hospital not home anymore and under certain conditions with some unfamiliar machines around the chest and the nose. In the hospital pain and symptom can be managed. Some even intercept death using artificial means, but hospice house was provided as an alternative to the hospital where terminally ill could be managed through palliative care.[210]

Euthanasia debate gained more momentum after the *Karen Ann Quinlan Case* in US[211] who was in a coma and only breathed through respirators for a long time. She was declared to be in a permanent vegetative state with brain damage and only feeding tube kept her alive. After realising there was no sign of hope her parent asked the doctors to turn off the respirators and unplug the feeding tube. The hospital refused that it is an act of killing and that they do not kill people in their hospital.[212] The case went to court; the court's decision turns out to be a precedent on the question of removing ventilator and euthanasia. It was held that the action of the parent will not be in her best interest, although the decision was reversed by the New Jersey Supreme Court which allowed the respirators to be removed having regard to the right to privacy. The court gave the hospital immunity against prosecution for removing the feeding tube and the respirators. One important issue this case raised is that a patient has the right to refuse medical treatment, which includes ventilator and feeding tube.[213]

[209] Cohen-almagor, "Why the Netherlands?"31.
[210] Shai J.Lavi, *The Modern Art of Dying: A History of Euthanasia in the United State* (New Jersay: Princeton University Press, 2005),61.
[211] In re Quinlan, US, A.2d 647 (1976) 355.
[212] Ibid
[213] Fremgen F. Bonnie, *Medical Law and Ethics*, 4th ed. (New York: Pearson Prentice Hall, 2012),113.

In Nigeria, right to refuse medical treatment is recognised in the decision of the Nigerian Supreme Court in *MDPDT v. Okonkwo.* However, if the implication of removing the feeding tube and respirators is death, how can a doctor in Nigeria escape criminal responsibility for removing the life-support on the request of the patient or his family? This is an act that constitutes a crime under the Nigerian law.[214] The legal framework created confusion similar to what was obtained in Netherland before the Termination of Life on Request and Assisted Suicide (Review Procedures) Act in 2002. Euthanasia was prohibited under the law, while it is permitted to be practiced under some circumstances.[215] There is the need for doctors to know what situation they are bound to obey the law in Nigeria.

Furthermore, the above decision of the New Jersey Supreme Court further encouraged the struggle for euthanasia.[216] Just like the *MDPDT v. Okonkwo* encourage the argument for supporting euthanasia in Nigeria. One of the views was that to live or die is a matter of individual choice. Religious influence was reducing drastically; people could put religion aside to hold an opinion. Renown philosophers of that time were Michel de Montaigne, David Hume, Arthur Schopenhauer, Francis Bacon and Thomas Hobbes[217] who were of the view that voluntary death is a right nature has given an individual like the property right, especially that where a terminally ill patient killed himself he did no harm to the society. These great thinkers' contributions influenced the development of Western philosophical thoughts towards accepting euthanasia. The bedrock of understanding euthanasia from the legal perspective was laid down and the

[214] Section 311 and 316 Criminal Code, Cap C38, Laws of the Federation of Nigeria (2004).
[215] Raphael Cohen-almagor, "Euthanasia in the Netherlands : The Legal Framework," *Michigan State University-Detroit College of Law Journal of International Law* 2, no. May (2014): 4.
[216] Raymond Whitting, *A Natural Right to Die: Twenty-Three Century of Debate* (Wesport Connecticut, Greenwood Press, 2002),25.
[217] Margaret Pabst Battin, *Ending Life : Ethics and the Way We Die* (New York: Oxford University Press, 2005),15.

need to provide a regulatory framework became an issue. The struggle then was about the idea that there is no harm to the society if voluntary euthanasia is recognised and criminalising it violates the basic individual right to self-determination.[218]

The famous euthanasia doctor Jack Kevorkian with his controversial action of assisting his patient to die contributed to the development of the struggle.[219] Kevorkian used the electronic machine to assist his patient to take their lives. It was argued that Jack was behind Michigan criminalising physician-assisted suicide, yet he was acquitted three times by juries in trial both before and after the Michigan law. Kevorkian was only convicted of murder when he performed euthanasia on a person suffering from Sclerosis which was broadcasted on the national television; this is the only case that cut the attention of international media and right to life group.[220] However, the practice of euthanasia is not as common as most people thought. It was a practice among doctors long ago only that it has not been brought into the limelight, maybe because of terminology, many might not take what was happening as euthanasia.

In the African society, history has shown that some cultures condoned killing and some practices like euthanasia. In societies like Yoruba in Nigeria, twin babies were considered evil, abnormal and monstrous and so they were killed as soon as they were born.[221] The practice is called "Ibeji", but this researcher and many other researchers opposed the view that it is euthanasia. It was not made on request or in the name of relieving a patient from pain. In that situation, it is the custom of killing the twins to

[218] Keown J., *Euthanasia, Ethics, And Public Policy: An Argument Against Legalisation* (New York: Cambridge University Press, 2002),35.
[219] Yuvraj Dilip Patil, "Euthanasia and Death with Dignity," *Journal of Krishna Institute of Medical Sciences University* 5, no. 3 (2016): 142.
[220] People of the State of Michigan v. Jack Kevorkian Oakland Circuit 221758 (1996).
[221] Bamgbose, "Euthanasia: Another Face of Murder."20

avoid the evil and bad luck to the community. Another view held by Southern Bantu[222] groups stated that twin children are connected to a wild animal and therefore a threat and obstruction to peace in the society. This also provoked fear in the birth of twin children which necessitate the killing of one or both pair of the twins. Although this can be described as infanticide, the children suffer from no physical or emotional deformity and are not suffering from any terminal illness. The only reason for killing them is lack of information of reproductive nature of human beings or human fertilisation. At best it is the active non-voluntary killing of vulnerable children, this act of killing twins as explained above is not euthanasia; it is sheer infanticide due to ignorance of human genetics. In this process the children (twins) are mercilessly killed without necessarily suffering from any serious disease or condition; it is a cultural belief originated from ignorance of the genetic and biological cause of twins' birth.[223]

The struggle for euthanasia is not well entrenched in Africa because colonisation of the African countries by Europeans brought about the rejection of any act of killing or terminating life. The laws they brought were all against the practice.[224] Another reason is that patients do not undergo a futile medical treatment and where a patient died in a hospital his family do not ask or investigate what is the cause. Of course, there are terminal diseases in Africa like cancer, diabetes and kidney failure, but euthanasia is not contemplated as a normal practice among African doctors. In the opinion of Sakali[225] whether euthanasia or assisted suicide is debated in Africa one cannot close his eyes to their existence so long as terminal diseases also exist in Africa. It should

[222] Sakali F. "The Contemporary Euthanasia Debate in the Light of African World View and Ethics," *SEGi Review* 6 (2013):5.
[223] Helen L. Ball and Catherine M. Hill, "'Re-Evaluating Twin Infanticide,' Current Anthropology," The University of Chicago Journal 37, no. 5 (1996):856.
[224] Osato, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria." 12.
[225] Sakali, "The Contemporary Euthanasia Debate in the Light of African World View and Ethics."

be noted that some African scholars have already started calling for the recognition and practice of euthanasia.[226] In the view of Masaka, if an HIV/AIDS patient wish to end his life is unfair for doctors to refuse to assist him because that will worsen his situation, thus voluntary euthanasia can be morally acceptable to such kind of patients.[227]

Recently, a case was made for euthanasia in Nigeria. Osato[228] argued that the practice of euthanasia is not illegal in Nigeria if the provision of the Constitution were read jointly, not just Section 33 dealing with the right to life. Section 34 and 35 (dealing with right to dignity of human person and right to personal liberty) should be read together with Section 33 for the practice to be legal. The implication of section 33 is that nobody should be deprived of his life except through the process of law. For example, self-defence, or sentence of a court of law. While Section 34 deals with subjecting people to any inhuman and degrading treatment like force labour or any unnecessary hardship. But Section 35 provides the citizens with the right to live a free life without any governmental interference. Therefore, the combination of these rights will provide an answer to the legality of the practice of euthanasia.

Furthermore, the above argument got some support from the recognition of the right to refuse life-saving treatment in the case of *Okonkwo* by the Nigerian Supreme Court. Linking euthanasia with the right to life alone without bringing other rights, like dignity and self-determination a case cannot be made for the recognition of the practice. The reason is that termination of the life of any patient is a violation of his

[226]Omonzejele F.P, "African Ethics and Voluntary Euthanasia"," Journal of Allergy and Clinical Immunologoly 23, no. 3 (2004): 673.
[227] Dennis, "A Theoretical Defense of Voluntary Euthanasia in the Context of AIDS."
[228] Osato, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria."12.

right to life under the Section 33 of the Constitution because the quality of life or excruciating pain does not form part of the exception to protecting the right to life.

2.3 Death and Dying Process

Socrates categorically stated that discussions on the death and people`s perception lay a concrete foundation for the concept of euthanasia. Kastenbaum qoated Socrate in the following words:

> "To fear death, gentlemen is no other than to think oneself wise when one is not, to think he knows what he does not know. No one knows whether death may not be the greatest of all blessings for a man, yet men fear it as if they know that is the greatest of evils."[229]

According to Socrates people have no reason to fear death. However, he failed to appreciate that fear of death is related to some societies. People in Africa fear death more than people from the West.

Death is an in avoidable part of life and all living organism shall have a test of it. It does not only affect the deceased but his entire community, it brings them together to mourn each other. It was considered a social event rather than a medical one. For centuries people die in their bed with their family members and neighbours around.[230] However, during the 18th century, the perception completely changed due to the advancement of modern technology and the concept of individualism. Advances in medicine include organ transplant and life support systems e.g. ventilators and respirators. Religion was substituted with science, speculation with certainties through

[229] Kastenbaum P., "Psychological Perspectives on Death.," *Annual Review of Psychology* 28 (1977): 225.
[230] Paul Carrick, "Phylosophy and Medicine," in *Medical Ethics in Antiquity: Philosophical Perspectives on Abortion and Euthanasia* (Springer Netherlands, 1985), 245.

experiment.[231] This development also changed the meaning and perception of death. Determining whether a person is dead or still living is very vital. Nobody wishes to act in a mistaking belief that someone is dead while he is still living because the way a living is treated is different with the dead.

Therefore, there are legal and ethical issues involve in the dying process. Doctors have the legal duty to preserve the dignity of their patients and save the life of the donor in case of organ donation and the recipient.[232] The doctor must treat the donor with the utmost respect. Doctors must observe the *Dead Donor Rule.*[233] That is no attempt shall be made to temper with the dying process. Two minutes after death last, human organs are still good and it can be removed. However, more time is suggested as a *no-touch period* so that other issues can be ascertained and settle before starting the retrieval of the organs.[234] This section explains the meaning of death and it is determining procedure from the medical and legal point of view.

Doctors have some criteria of establishing death. Thus, if the heart stops functioning, body temperature significantly drops, lack of response to pain and other biological disintegration. All these features were noticed hours after death, although they may not completely be noticed where life support instruments are used.[235] This entails the need for an acceptable definition of death. Another reason is that sometimes, people give Advance Directives allowing removal of their organs for transplant if they die. This makes it important to determine the exact moment of death since the earlier the

[231] MA Somerville, "Song of Death: The Lyrics of Euthanasia," *J. Contemp. Health L. & Pol'y* 9, no. 1 (1993): 7. (Westport, Greenwood Press, 2002),22.
[232] The General Medical Council, "Treatment and Care towards the End of Life," 2010. 4
[233] Davies, Marie, and Cooper, *A Companion to Bioethics Blackwell Companions to Philosophy*. (West Sussex, A John Wiley & Sons, Ltd., Publication, 2009), 383.
[234]Nereo Zamperetti et Al, "Heart Donation and Transplantation after Circulatory Death: Ethical Issues after Europe's First Case," *Intensive Care Med* 42 (2016): 94.
[235] Fremgen F. Bonnie, *Medical Law and Ethics*, 4th ed. (New York: Pearson Prentice Hall, 2012),323.

organ is removed the better for the beneficiary of the organ.[236] Recently, a legal action was filed against a doctor for declaring a person dies while the person was alive and other signs of living were noticed such as breathing and his eyes opened.[237] The implication of this is that it is possible for a patient to satisfy the death criteria, be declared dead, and yet is still alive. These cases are more rampant in African countries. Many people are buried alive because their death is not fully certified and confirmed.[238] Lack of standard procedure to certify death may be one of the reasons.

The controversy continues to be on whether the brain death[239] related definition of death shall be used or the traditional cardiac[240] definitions shall remain the determinant. However, even where the two criteria (cardiac arrest and brain death) are used there is still the difficulty of determining whether a patient is dead or alive. In 1986 New York State created a task force on life and law.[241] The task force was given a term of reference to determine when can people be considered dead. It is when there is a neurological failure or brain stem death. The following shall be the brief clarification of the two definitions of death.

[236] Divine N, Banyubala, "Death in Ghana : Sociocultural Implications for Organ Transplant Regulation," *Medical Law International*, 1,(2014):5.
[237] Ennifer Smith, "Dead People Don't Move': Trial to Begin for Doctor Who Declared a Patient Dead Even Though He Was 'Breathing and had His Eyes Open' and Lived for Another Day," *Daily Mail*, 2018.
[238] Wangari Waweru-Siika et al., "Brain Death Determination: The Imperative for Policy and Legal Initiatives in Sub-Saharan Africa," *Global Public Health* 12, no. 5 (2017): 589.
[239] Irreversible loss of brain function is the simple meaning of brain death.
[240] The stop of heart function
[241]New York State Task Force on Life & the Law, "The Determination of Death" (New York, 1986), https://www.health.ny.gov/regulations/task_force/reports_publications/docs/determination_of_death.pdf.https://www.health.ny.gov/regulations/task_force/reports_publications/docs/determination_of_death.pdf. Accessed 24/5/2016

2.3.1 Traditional Meaning of Death

At common law breathing and circulation of blood are the best features of a living person.[242] For many centuries cessation of circulation and respiration were considered the traditional meaning of death.[243] This is otherwise known as cardiac death, death where the heart stops working thereby affecting other organisms. Any person whose respiratory system and heart stops (irreversible cessation of respiratory and circulatory function) is considered dead. Relying on this to certify somebody's death is not without a doubt even among cardiologist, even though that is the meaning of death even in a legal parlance. Reliance on this traditional believe make many people to be buried alive. Studies have shown many people live after evidence has shown that their heart stopped functioning. Other important bodies' organs like liver, kidney or brain are also the good determinant of death only where they cause heart stop from functioning.[244]

In an attempt to address this problem, an Ad Hoc Committee was created at Harvard Medical School to develop a guideline for removing life support for the patient with brain death or irreversible coma.[245] The same movement was made in Australia in 1977, Australian Law Reform Commission suggested that government must enact a law for the purposes of defining death. The law should be able to state that, there is death if the irreversible cessation of all function of the brain or circulation of blood occurs.[246] Given credence to this issue, many other states enacted laws to make the issue clear. For example, South Australia enacted Death Definition Act of 1983,[247]

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[242] Marilee Clausing, "The Acceptance of Brain Death as a Legal Definition of Death in Illinois : In Re Haymer Definition Of Death In Illinois :," *Depaul Law Review* 33, no. 1 (1983).
[243] De Vries, "A Dutch Perspective: The Limits of Lawful Euthanasia." (New York, Cambridge University Press, 2010), 295.
[244] Singer P., *The Cambridge Textbook of Bioethics*.(New York, Cambridge University Press, 2008). 86
[245] Ibid.205
[246] Thomas S Huddle et al., "Death, Organ Transplantation and Medical Practice.," Philosophy, Ethics, and Humanities in Medicine : PEHM 3 (2008): 5.
[247] Death Definition Act, No 12 (South Australia, 1983).

where death is said to have occurred if all function of the brain ceases irreversibly or circulation of the blood in the body ceases. The same stand was taken in Tasmania, in the Human Tissue Act 1985.[248]

Nigeria is yet to establish a law that clearly defines death and its criteria of determination. However, in Nigeria brain death is the conventional criteria to determine death; although cessation of the circulatory function is what is used in practice. The reason is that brain death is too technical and cumbersome to practice.[249] It requires a special procedure to determine the cessation of all brain function which sometimes includes some laboratory tests and confirmation from more than one doctor.[250] It is considered the most reliable procedure for determining death. The following is the brief explanation of the development.

2.3.2 Modern Definition of Death

Brain death is the modern meaning of death. It was observed that restricting the meaning of death to the stop of heart function (cessation of cardiac function) is not enough to eliminate doubt in burying people alive. The rule is that once the heart, breathing and the cardiac function stop a person is declared dead, because stopping the function of any of these important organs lead to the death of the entire system.[251]

In the year 1968 new criteria for death was suggested. This was issued by the Harvard Medical School, in a report which suggested the irreversible loss of brain function as the best and independent criteria to determine whether death has occurred.[252]

[248] Human Tissue Act 1985, No 118 (Tasmania, 1985).
[249] Elisabeth, "The Withdrwal of Treatment: Working Paper in the Health Science." 12
[250] Wangari Waweru-Siika et al., "Brain Death Determination: The Imperative for Policy and Legal Initiatives in Sub-Saharan Africa," *Global Public Health* 12, no. 5 (2017): 589.
[251] Maja, *Speaking for Dead: The Human Body an Biology and Medicine*. 207
[252] Paula A. Byrne and Richard G. Nilges Michael Potts, *Byond Brain Death: The Case against Brain Based Criteria for Human Death* (London: Kluwer Academic Publishers, 2002), 235.

According to the report, lack of brain function criteria includes total lack of reflexes, unresponsively and lack of spontaneous movement of breathing.[253]

This development brought challenges to many questionable medical practices like do not resuscitate order, procurement of organ and organ donation. All these increased the need to have a settled criterion for death. Brain death-based criteria were developed due to the development of technological e.g. ventilator can replace lost respiratory function allowing physicians to prolong life indefinitely. It was opined that brain death criteria were developed by Harvard Medical School to allow doctors to turn off life support without fear of prosecution, and it will also allow organ procurement without violating the rule on Dead Donor.[254]

In *Airedale NHS v. Bland*[255] the Court accepted brain death as the acceptable definition of death to both law and medicine. The court must determine whether Bland is dead or alive so that a living person shall not be treated as dead because if he is considered dead there will be no problem removing the life support. Bland was in a permanent vegetative state not considered as brain stem death, therefore Bland is not dead. However, where the patient is on a ventilator and certified brain dead he will be considered dead by the court.[256] Although even where the issue of death is raised in court, the court has to rely on expert evidence, unfortunately, there is serious controversy among medical expert on the criteria of death.

Death is seen as a process rather than an event. It means death does not occur at once; it starts from a point and goes on until the end. It was agreed that a person could be

[253] Rihards Poļaks and Valentija Liholaja, "Distinction Between Euthanasia and Valid Medical Decision and Its Impact on Unborn Life," Jurisprudence 21, no. 1 (2014): 223.
[254] This rule state that donors must be declared dead by physicians without conflict of interest before the procurement of organs begins. And the harvest must not be the cost of the patient's death.
[255] Airedale NHS v. Bland 1 All ER (1993) 821
[256] Re A. Medical Law Review, 2 (1992) 2001.

considered dead for different purposes at the different time. He may be declared dead for the purposes of harvesting his organ or where he may be declared dead for the purposes of burial.[257] Another view is that person's organs do not stop functioning at a time but fail to work progressively once there is brain death.[258] This will make matter more complicated especially in determining when to remove organs for transplant. It has to be done as soon as possible once the person is dead. However, if a person is a certified brain dead, while the heart is still beating organ can be removed for the purposes of donation to save a life.[259] Any attempt to wait for further confirmation is an exercise in futility, because the organ may get decomposed.[260]

Therefore, criteria for determining death has been a controversial issue around the globe, however, it has been settled on the brain death as the best criteria.[261] Although too technical and cumbersome, about 80 countries accepted it as its criteria, 70 have formulated a guideline, while about 55 have the legal standard documents to guide the practice.[262] It is important for a country to have a guideline for determining death. In Nigeria, there is no standard guideline or any legal document stipulating the criteria for death. Even though it was reported that even where the guideline exists it has not been implemented or proven effective in reducing conflict of interest especially on organ donation.

[257] Herring Jonathan, Medical Law: Questions and Answer Series, (New York: Routledge Tailor and Francis Group, 2013), 213.
[258] Emily Jackson, *Medical Text, Cases, and Materials Law* (New York: Oxford University Press, 2006). 78
[259] Fidalis, "End-of-Life Decision about Withholding or Withdrawing Therapy: Medical,ethics, and Religion-Cultureal Consideration." 13.
[260] Hsieh, "Brain Death Worldwide: Accepted Fact but No Global Consensus in Diagnostic Criteria"3
[261] Bood Alex, "The Dutch Experience of Euthanasia," *Journal of Law and Society* 25, no. 4 (2016): 637..
[262] World Health Organization, "International Guidelines for the Determination of Death – Phase I, Montreal Forum Report," 2012.

Therefore, the point being made here is that the meaning of death has shifted from cardiopulmonary death (what was called traditional meaning of death) to brain death. This modern meaning is accepted by most of the countries in the world especially Britain and United State. This is influenced by the growing number of technological development and other medical practices, like resuscitation and organs donations. This brief discussion of the dying process and meaning of death is important in view of its relevance to the study, especially the removal of life support when a patient is in a coma or permanent vegetative state, where there is growing need to certify death to avoid ethical and violation of the law.

2.4 Debate for and against Euthanasia

There are different arguments which supported and opposed the practices of euthanasia. In view of the development of the argument ranging from human rights to medical ethics, compassion and religion.[263] There is the need to look at whether the law can be passed to allow euthanasia based on human rights principles, compassion, organs harvesting or when doctors deem it fit in the interest of the patient where all treatment prove to be futile for other reasons. One other important issue that is addressed is the argument on whether withdrawal and withholding of futile medical treatment amount to euthanasia or not. On this issue, various views of International Medical Association were highlighted. "Doctrine of Double Effect" which originated from Catholic faith is also discussed.

[263] Alison Plumb, "Euthanasia Politics in the Australian State and Territorial Parliaments" (PhD Thesis, Australian National Univeristy, 2014),16.

2.4.1 Argument in Support of Euthanasia

Several scholars and human rights activist argue in distinct perspective on the permissibility of euthanasia. The following are some of the basis of their argument.

2.4.1.1 Right to Die with Dignity

The Universal Declaration of Human Right 1948 stated that human beings have inherent dignity and all human beings must have respect for the dignity of their person. It is on this basis, that the proponents of euthanasia argue that it is a violation of a person dignity to allow him to go through the pain that cannot be alleviated without being given the opportunity to terminate his life in the manner he chooses.

Everybody wants to have control of his body and mind, while serious ill health results in the loss of body control or even loss of cognitive function which is very dehumanising. The fear of going through pain and inability to exercise some level of control makes many patients resolve in terminating their lives as the only means to avoid being subjected to an undignified death.[264] Supporters of this practice believe that human being is an autonomous being with the faculty of reasoning to know what is the best for him and that such individual shall be allowed to choose when and how to end his life freely.[265] The law shall allow patient with a terminal illness to have access to medical assistance, to have an easy and dignified death voluntarily. Majority of Americans believe that question of death and dying shall be left to the patient, his family and caregivers, not the government or the court.[266] That is to say, it is the right

[264] Melanie Ann and Radhika Selvalingam, "Physician-Assisted Death in England and Wales" (Newcastle University, 2014),159.
[265] Adefarasin V. "Euthanasia: An Act of Mercy or Murder?" *Journal of Arts and Contemporary societies*, 2, no 4 (2012):69.
[266] Dowbiggin, "From Sander to Schiavo: Morality, Partisan Politics, and America's Culture War over Euthanasia, 1950-2010." 265

of the patient or his family where he could not be able to take a rational decision whether to die or to live.[267]

2.4.1.2 Suffering from Excruciating Pain

This view has been one of the most considerable arguments for euthanasia. Patients shall not be left in an excruciating pain especially if the case is hopeless. Life shall be terminated as a form of mercy if it only subjects a person to hardship and suffering. According to Rachel,[268] terminally ill patients undergo a serious pain that will not reasonably be acceptable and cannot be explained by those who have not experienced it. He carries the argument further that the experience is enormous that those who do not perceive it would not like to read or think about it. Allowing a patient to remain in such an excruciating pain or in a permanent vegetative state, will run counter to the feelings of family and friends who must have seen the patient at the time he is healthy and active.[269] Euthanasia is the only solution to such pain and it shall be allowed. It is in the patient's best interest to relieve him from the pain. Rachel avoids the argument using the utilitarian version of greatest happiness to the greatest number which he subscribed because if his reason for supporting euthanasia is for mercy it will contradict the general idea of the utilitarian school of thought. In the sense that, being merciful for taking the patient's life the greatest number of people will not be of any benefit.[270]

Furthermore, Rachel argues in support of doctors who take life for the reason of mercy to relieve pain and suffering. He argued that just like the case of the American criminal

[267] Ann S. et al., "Psychological Perspectives on Euthanasia and the Terminally Ill: An Australian Psychological Society Discussion Paper," *Australian Psychologist* 33, no. April (1998): 1.
[268] James Rachel, Medical Ethics and the Rule against Killing: Philosophical Medical Ethics, ed. Jr In S. Stuart, & H. T. Engelhardt, (1977), 207.
[269] Abayomi Samgson, "Euthanasia: Socio-Medical and Legal Perspective," *International Journal of Humanities and Social Science* 4, no. 10 (2014): 2.
[270] Mohammad Manzoor Malik, *Critique of James Rachels's Defense of Euthanasia*, (2015).46

justice system where the burden of proof is on the prosecution, sometimes the burden shifts where the accused admits the offence but plead with an excuse not to be punished. For example, insanity or self-defense, in all these cases the burden shifts to the prosecution to show the reason why the accused shall be punished. In a similar situation, doctors shall not be punished where it is established that the reason for their action is mercy, compassion[271] because of the difficult position of the patient after several requests to let life go.

The patient shall not be left in an extreme pain especially ache that cannot be alleviated. If the law will allow a patient to refuse or withdraw a medical treatment that can lead to death because the patient fears pain, the law shall allow an easy way to finally alleviate the pain. This is the situation in Nigeria whereby the law criminalises termination of life but allows refusing treatment that can lead to death. The law requires an amendment to find a solution to the dilemma of the Nigerian doctors.

2.4.1.3 Stop the Hidden Practices of Euthanasia

The proponents of euthanasia insisted that a law must be made to allow and regulate its practice. Criminalising it makes doctors do it secretly which makes the law incapable of regulating it.[272] Doctors terminate and assisting patients to die with no monitoring or control. A study in San Francisco revealed that about 53 percent of doctors who work with HIV patients provide aid in dying despite that it is illegal to do so.[273] More investigation is revealing a lot of doctors supporting the legalisation of

[271] Downie J. "The Contested Lessons of Euthanasia in The Netherlands," *Health Law J* 8, no. 17 (2000): 119–39. (2009):316.
[272] John Keown, Euthanasia , Ethics and Public Policy An Argument against Legalisation, vol. 1 (New York: Cambridge University Press, 2015),212.
[273] Faye J. Girsh, "Voluntary Euthanasia Should Be Legalised," in Euthanasia Opposing View Point, ed. David M. Haugen Devid L. Bender, Bruno Leon, Bonnie Sxumski (California: Greenhaven Press Inc., 2000), 69.

euthanasia there is every tendency that much more are perpetrating in the act behind the scene. It is in the interest of both doctors and the patient to regulate it to protect vulnerable from abuse. Furthermore, legalising it will be like "Insurance Policy" against painful death since there is a way to ensure a less painful death and it will protect vulnerable against wrongful death.[274]

It should further be contended that there is a serious hypocrisy in the law because it criminalises euthanasia and allows certain practices that are not having any significant difference with euthanasia. Citing the permission to administer seductive drugs to manage pain even though they have the consequences of hastening death, and why should the law allow withdrawal of life support and refuse to allow active euthanasia? They should rather leave the patient in his pain, the situation which may take a longer time to die while the patient continues to suffer.

It is true not legalising voluntary euthanasia and allows some practices that hasten death is not in the best interest of the patients. Doctors can do many things that hasten death and get away with it because it is hardly investigated, and the medical practice is secretly regulated. For this reason, the amendment of the law becomes necessary to ensure patients are protected against abuse and to clear the dilemma of doctors.

2.4.1.4 Euthanasia Provides a Good Opportunity for Organs Harvest

There is the manifest inadequacy of human body organ all over the world today. Those that are in dire need outnumbered the available organs; many died while waiting for one organ or the other and this has caused the increase of financial burden on dialysis as the alternative to organs substitute. It is the practice in Belgium[275] that organs of

[274] Visnja, "Argument in Support and against Euthanasia."115.
[275] Raphael Cohen-Almagor, "First Do No Harm: Pressing Concerns Regarding Euthanasia in Belgium," *International Journal of Law and Psychiatry* 36, no. 5–6 (2013): 515.

Belgium's are being taken as a donation from euthanasia patient after their death and many people are happy others will benefit from their organs after they died. However, a patient has the right to communicate if he or she does not want the organ to be removed. Organs of Belgium nationals or anybody that lives in Belgium for six months can be removed for the purposes of donation, except otherwise communicated, and euthanasia presents a good opportunity for such harvest.[276] Especially that research has shown that about 20% of those who died through euthanasia their organs are very good and useful.[277] Around 2005 to 2007 four euthanasia patient have donated their organs.[278] In the Netherland from the year 2010 to 2014 organ donation increase from 216 to 271 and the number of those waiting for organ decreased from 1300 to 1044.[279] Yet this development could not solve the problem of organ need and this makes post dead donation via euthanasia become an option. This practice is sensitive but ethically acceptable because it has the potential of increasing donation from 200 to 400 every year.

One may fear that there will be abuse because of the need to urgently harvest the organ, however respondent number nine made a point when asked about the need for recognition of euthanasia in Nigeria to assist in increasing organs availability and the fear of abuse:

> "*..for example, brain death, there are rules before you certify, there are even more stringent rules if that person is involved in organ donation, that interest of getting the organ will not be the reason for the certification of anyone's death, you have to have two doctors who are specialist in the area of the disease who do not have any*

[276] Deepa P. "Bio-Ethical Perspectives on Euthanasia" (: Thesis Submitted to Pondicherry University, 2013), 61.
[277] Cook M. "Belgian Doctors Harvest High Quality Organs From Euthanased Patients. : Careful!," 2011. (http://www.mercatornet.com/careful/view/8598/) Accessed 3/1/2018
[278] Raphael Cohen-Almagor, "First Do No Harm: Pressing Concerns Regarding Euthanasia in Belgium," *International Journal of Law and Psychiatry* 36, no. 5–6 (2013): 516.
[279] Cristina L H Traina, "Religious Perspectives on Assisted Suicide," *The Journal of Criminal Law and Criminology* 88, no. 3 (2016): 1147–54.

> *connection with the issue to individually certify to withdraw life support one from Zaria and another from Sokoto who will testify that is unlikely for the patient to survive, after reviewing all the happening regarding that patient and they will not come together and the assessment will be independent and they concur, they can eventually give the approval for the withdrawal of the support to harvest the organ***."**

The respondent here agrees organ donation is a good reason for allowing euthanasia if the rules will be followed. Mostly the guidelines require irreversible coma, absent of motor response and absence of reflexes in addition to getting more than one doctor to certify.[280] It must be noted that even countries that allow it, the requirement of the law is that a request for euthanasia must be approved before one can make an organ donation. A number of cases indicated that patient and the family will be happy to see after euthanasia some other people will be able to live from the donation of their patient who died through this process.[281] On this ground, euthanasia advocate sees reasons in permitting euthanasia since other people can live a better and healthier life. It was also suggested that brain death shall be used as the only criteria for establishing death so that the organ can be harvested to save more lives.

2.4.2 Argument against Euthanasia

Proponents of the struggle for legalising euthanasia were opposed. Somerville has been one of the leading campaigners against allowing euthanasia practice.[282] As the study goes on, this subtitle presented the arguments sequentially. The opponents, for example, agreed that the most important goal of medicine is to provide cure and relief patient from pain. However, the born of contention is that they do not agree that the

[280]Nazmiye Özgür Karcıoğlu, Koyuncu, "Ethical Dilemma or Medical Problem ? An Emergency Department Approach to the Brain- Dead Patient and Preservation of the Organ Donor," *Emergency Medicine* 3, no. 2 (2017):2.
[281] Olivier Detry et al., "Organ Donation after Physician-Assisted Death," Transplant International 21, no. 9 (2008): 915.
[282] Somerville, "The Case against Euthanasia and Physician-Assisted Suicide." 10.

situation cannot be improved without resorting to euthanasia.[283] They argue that even where the illness becomes terminal without hope, palliative care will be used to manage pain and with the proper use of analgesic and spiritual guidance patient will be provided with psychological relief. Research has shown that religion has great influence on the acceptance of health condition and negative attitude toward euthanasia.[284] Palliative care shall be able to use these factors to make the terminally ill patient comfortable. Good pain management and the use of the spiritual guide make the patient not to persist in their request for euthanasia; they may even regret that they have ever thought of ending their life.[285] The points are as follows:

2.4.2.1 Sacred Nature of Human life and its Sanctity

The arguments consider the sanctity and holiness of life. These opinions consider that whether a person has the low or high quality of life, human life should be respected and preserved. It should not be accepted that because one is suffering from a debilitating illness and his quality of life has completely gone, he should be allowed to kill himself or be assisted to die. Human life has an intrinsic value which must be respected.[286] Practicing active euthanasia is "Playing God", only God can take an innocent life. Permitting it is a blatant violation of all religions, particularly Islam and Christianity.[287]

[283] Peter Singer, "Sound Board Ehanasia- A Critique," *The New England Journal of Medicine* 322, no. 26 (1990): 1882.
[284] Naser Aghababaei, "The Euthanasia-Religion Nexus: Exploring Religious Orientation and Euthanasia Attitude Measures in a Muslim Context.," Omega 66, no. 4 (2012): 333.
[285] Tim Quill and Robert M. Arnold, "Responding to a Request for Hastening Death #159.," *Journal of Palliative Medicine* 11, no. 8 (2008): 1152.
[286] Mark, Source Book on Medical Law. 56
[287] Cristina L H Traina, "Religious Perspectives on Assisted Suicide," *The Journal of Criminal Law and Criminology* 88, no. 3 (2016): 1147.

Greek philosophers like Plato and Aristotle[288] discouraged euthanasia that people have to live with what nature has offered for them. Previous scholars also rely on intrinsic nature of human life; their view is that terminating any one's life is like stealing from God what God owns. One of the recent scholars Thomas Hopes[289] argued that people will have to live under civil authority where their life would be protected and ensured. The only responsibility of that authority is to ensure lives are not terminated unjustly. Therefore, any government legalising euthanasia has defeated it owns purpose and it has failed.

This argument seems to be religiously oriented, during the interview session two respondents who are religious scholars reaffirmed this view, respondent number four:

> "*Let me start as a Christian from the religious point of view, I know that one of the commandments God has given is "thou shall not kill" and God did not make any exceptions, I know an instance of war yes is either you kill the enemy or the enemy kills you, outside that if we are to follow the injunction of God there is no reason for which a man shall kill another person, but when it comes to the issues of euthanasia because somebody is going through pains and suffering I think is not justifiable, because there is time such decision is simply taken not with the consent of the patient, I remember reading somewhere I cannot exactly quote, it says life was meant to be lived and curiosity must allow life to live with fullest. Now following from that statement, it means that life was meant to be lived until the person who created it God decide to take it, ordinarily no man shall take a life except above*."[290]

This is the principle in both Islam[291] and Christianity. In Islam ill health is one of the test Almighty Allah has bestowed upon individual. A person is expected to endures

[288] John E. Ferguson, *The Right to Die*, vol. 1 (New York: Chelsea House Publishers, 2007),.27.
[289] Garrath Williams, "Thomas Hobbes: Moral and Political Philosophy," *Internet Encyclopedia of Philosophy : A Peer-Reviewed Academic Source*, 1995, http://www.iep.utm.edu/hobmoral/#H4. Accessed 11/4/2018
[290] Interview with Respondents Number 4 at his Office
[291] Mizan Muhammad & Puteri Nemie Jahn Kassim Fadhlina Alias, "The Legality of Euthanasia from the Malaysian and Islamic Perspectives : An Overview," *Medicine and Law*, no. July (2017): 167.

and persevere to get a tremendous reward.[292] This assertion is further supported by the Islamic Code of Medical Ethics:

> "Mercy killing, like suicide, finds no support except in the atheistic way of thinking that believes that our life on this earth is followed by void. The claim of killing for painful hopeless illness is also refuted, for there is no human pain that cannot be largely conquered by medication or by suitable neurosurgery"[293]

Simply the decision to live or die is not for any human being to take is for the creature who knows which life is worth living or worth dying. Any attempt to take this decision is playing God.

2.4.2.2 Slippery Slope

Slippery slope means if voluntary euthanasia is legalised involuntary euthanasia cannot be controlled. Arguments indicated that euthanasia should be discouraged if it is allowed it will be against public policy, because if the law is to be made for those who wish to voluntarily end their lives, however, the vulnerable will not be safe.[294] In other words, it will open a door for involuntary euthanasia where people will be put to death against their wish. It was established that half of the people euthanised under the Belgium euthanasia practice is done without the patient's consent.[295] It was reported that the practice in the Netherlands is suffering from serious abuse and the law will not be able to control it.[296] In thousands of euthanasia cases, evidence has shown that

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[292] *Qur'an* 2 Verse 155. Mawlani Sher Ali, *The Holy Quran, Arabic Text and English Translation* (Tilford UK: Islam International Publications Limited, 2004), http://www.tangali.net/Kanzul Iman Quran EnglishTranslation.pdf. Accessed 6/3/2018

[293] Islamic Organization of Medical Sciences, "The Islamic Code of Medical Ethics Endorsed by the First International Conference on Islamic Medicine" (Kuwait, 1981).

[294] Barry R. Schaller, *Understanding Bioethics and the Law* (London: Wesport Connecticut, 2008), 99.

[295] Wole Iyaniwura, "Law, Morality and Medicine: The Euthanasia Dabate," *Global Journal of Human-Social Science* 14, no. 4 (2014):34.

[296] Cohen-Almagor R. *Euthanasia in the Netherlands: The Policy and Practice of Mercy Killing*, 2004,https://books.google.com/books?hl=en&lr=&id=b52nyi3NZigC&oi=fnd&pg=PR9&dq=cohen+almagor+&ots=rQhq3ZuSba&sig=7OvtQqx0pLG20-7cFBszLIMDQ7A. Accessed 12/3/2018

doctors have continuously violated the law and the guidelines.[297] It is also part of the argument that legalising euthanasia is just like endorsing and bringing back the horrible thing that happened during the Nazi period,[298] where children and vulnerable human being were killed with poison and other dangerous substance.[299] Government inability to bring the practice of euthanasia under control is one of the major challenges of permitting it.

Unfortunately, we have seen cases where euthanasia was used in a completely unacceptable situation even to those who advocate for it. It was reported that some twin brothers who were born deaf, were killed in Belgium because they were told by their doctors that they will soon go blind because they cannot withstand the agony of not being able to see each other they requested for euthanasia and was systematically applied.[300]

This is exactly the fear expressed by the opponent for passing any law allowing an act of killing even with the voluntary consent of the patient because time will come when people who do not deserve will request for it or even push to go for it. Another bad case for the proponent of euthanasia is the case of a rapist who was sentenced for murder and rape, he was of the view that his life is unbearable and miserable, his stay in prison caused him psychological pain and he requested for euthanasia. Since then there were about fifteen similar cases of prisoners requesting for euthanasia in

[297] William L. Saunders and Michael A. Fragoso, "Should We Legalise Voluntary Euthanasia and Physician Assisted Suicide ?," Family Research Council, no. 800 (2013): 1.
[298] Van der Burg W., "The Slippery-Slope Argument.," *The Journal of Clinical Ethics* 3, no. 4 (1992): 256.
[299] Susan Benedict and Kuhla J., "Nurses' Participation in the Euthanasia Programs of Nazi Germany.," *Western Journal of Nursing Research* 21, no. 2 (1999): 246.
[300] James Rush and Damien Gayle, "Deaf Twins Who Discovered They Were Going Blind and Would Never See Each Other Again Are Euthanized in Belgian Hospital," Mailonline, (2013):25.

Belgium.[301] It is obvious this is not the intention of the lawmakers. What has been designed to assist patient in terminal sickness and in extreme and excruciating pain is now taking to be a convenient way to end life at any time one so wishes. This is on the side of the patient, a much more serious situation exists from the side of the doctors who prescribe the substance or carry the action themselves with or without the consent of the patient. There will be serious abuse according to the opponent if the law is passed to allow euthanasia.

2.4.2.3 Euthanasia is against the Professional Role of Doctors

The practice will be an anathema to the practice of medicine, the primary role of doctors will be usurped once euthanasia becomes legal.[302] It will take medical practice back to the olden days when doctors were both killers and healers.[303] This will have the negative effect of preventing patients from going to the hospital to seek treatment, the fear and anxiety of being put to death are enormous. The World Medical Association (WMA) vehemently rejected the idea of legalising euthanasia in the following words:

> "Euthanasia, that is the act of deliberate ending of the life of a patient, even at the patient's own request or at the request of close relatives, is unethical. This does not prevent the physician from respecting the desire of a patient to allow the natural process of death to follow its course in the terminal phase of sickness."[304]

The same association expressed further rejection of Physician-Assisted Suicide in 1992 in Spain where it said:

[301] Charlotte McDonald-Gibson, "Murderer and Rapist Frank Van Den Bleeken Granted Right to Euthanasia rather than the 'Unbearable Suffering' of Life in Prison," Independent, (2014):67.
[302] Julia Amanda Jackson, "The Ethics and Legality of Euthanasia and Physician Assisted Suicide," 2003.
[303] Melanie Ann and Radhika Selvalingam, "Physician-Assisted Death in England and Wales" 2014.
[304]"World Medical Association Decalaration on Euthanasia" (Spain, 1987), http://www.wma.net/en/30publications/10policies/e13b/. Accessed 6/3/2018

> "…physician assisted suicide, like euthanasia, is unethical and must be condemned by the medical profession. Where the assistance of the physician is intentionally and deliberately directed at enabling an individual to end his or her own life, the physician acts unethically. However, the right to decline medical treatment is a basic right of the patient and the physicians do not act unethically even if respecting such a wish result in the death of the patient."[305]

The ultimate fear of the medical profession is the respect and reputation of their profession. The trust and confidence people have in them will be eroded. It will also lead to a situation where doctors will not be encouraged to pursue vigorously the cure for their patients. This position is followed by other National Medical Associations around the world. Although, in 2005 British Medical Association shifted ground and declared a neutral stance as against their previous position of opposing euthanasia.[306] However, up to this time, American Medical Association (AMA) did not change their position. The AMA made a statement expressing its position on euthanasia:

> "Physician-assisted suicide is fundamentally inconsistent with the physician's professional role," and patients' requests for such action signal that more efforts need to be made to treat pain and psychological discomfort"[307]

The above statement was made by AMA showing its implication to the doctor-patient relationship. About forty other medical associations challenging the permission of physicians assisted death in the case of *Washington v. Glucksberg,*[308] whereas the associations encouraged pain management rather than taking life. They further assert that inadequate pain management is the only cause of such request for death. Many will agree with their argument that there will be some psychological problem where a patient is asking for doctors to terminate him. Instead of complying with his request a

[305] "World Medical Association Statements on Physician Assisted Suicide" (Oslo Norway, 2015), http://www.wma.net/en/30publications/10policies/p13/. Accessed 6/3/2018
[306] Ann Sommerville, "Changes in BMA Policy on Assisted Dying," *British Medical Journal* 331,(2005): 686.
[307] Jackson, "The Ethics and Legality of Euthanasia and Physician Assisted Suicide." 78.
[308] Washignton V. Glucksberg, 138 L .E d. (1997) 838.

means shall be provided to alleviate his suffering, fear and distress. This is one of the reasons this researcher supports some level of paternalism because not all patient has a better appreciation of their medical condition like doctors do, and some wishes of the patient have to be overridden, especially where it involves life and death. The historical antecedent that happened in the Georgetown College a long time ago is illustrative, where a lady who lost half of her blood to ulcer requires transfusion but refused on the religious ground being Jehovah's witness who considered blood transfusion a bad thing. The College Attorney sought and obtained an order to go ahead with the transfusion to save her life.[309] This is in order to show how important doctors shall take their role to save a life.

The same position was upheld in Nigeria as provided in the Code of Medical Practice:

> "One of the cardinal points in the Physician's Oath is the preservation of life and therefore, the act of mercy killing or helping a patient to commit suicide runs contradictory and antithetical. A doctor should not terminate life whether the patient is in sound health or is terminally ill. A practitioner shall be adjudged to be in breach of the ethical code of practice if found to have encouraged or participated in any of the following acts: (a) Termination of a patient life by the administration of drugs, even at the patient's explicit request. (b) Prescribing or supplying drugs with the explicit intention of enabling the patient to end his or her life. (c) Termination of a patient's life through the administration of drugs with or without the patient's explicit request thinking same to be in the interest of the patient."[310]

The above rule categorically prohibits any practice that lead to termination of life. The expectation of medical practitioners is to preserve life. The implication is that if doctors can terminate life on the request of their patient, it will lead to involuntary termination of life.

[309] William C. Cunningham, "Indicated Blood Transfusions and the Adult Jehovah ' S Witness : Trial Judge ' S Dillemma," *Valparaiso University Law Review* 2, no. 1 (1967): 55.
[310] Code of Medical Ethics, "Rules Of Professional Conduct For Medical & Dental Practitioners," 2004.

Furthermore, about four reasons were described as the likely factors that may lead to shift from voluntary to involuntary euthanasia:

1) Crypthanasia referring to secret euthanasia which will lead to doing it without the patient's consent. It will be done secretly and those who do not deserve to be euthanised will fall victims of unscrupulous doctors. One of the regulations provided in Oregon is that any case of euthanasia must be reported so that those who receive it can be traced. Surprisingly just three years after the practice was allowed, the fear of the opponent became obvious, as the poor, and vulnerable become the victims;[311]

2) Encouraging patient to go for euthanasia by the relative in order to get relief from the burden or even by the doctors themselves.[312] If their mind is influenced by relatives and health personnel it will not be a voluntary euthanasia;

3) surrogate euthanasia, whereas US Constitution guarantees due process which extends the right to incompetent to competent patients to allow euthanasia on the incompetent on the ground of "substituted judgment"[313] or the test of burden and benefit; and

4) the risk of discriminatory euthanasia, where patient from vulnerable group may be forced to accept euthanasia. The example was given above, since the legalisation of

[311] Cohen-Almagor, "First Do No Harm: Intentionally Shortening Lives of Patients without Their Explicit Request in Belgium."141.
[312] Fenigsen R., "Mercy, Muder & Morality:Perspectives on Euthanasia: A Case against Duch Euthanasia," Hastings Center Report 19, no. 1 (1989): 23.
[313] The Doctrine of Substituted Judgment refers to a situation where next of kin or any surrogate decision maker will prove with some certainty what the incompetent would have done in the situation. It is used where a competent person becomes incompetent to give consent to medical procedure.

physicians assisted suicide in Oregon where poor people, vulnerable and those who cannot have access to palliative care are the major victims.

In addition to the above arguments against the legilisation of euthanasia, its acceptance of the practice depends on the religious and socio-cultural position of a particular society.[314] Research has shown that more educated people are likely to accept the practice of euthanasia,[315] but people with strong religious belief are less likely to accept the practice of euthanasia.[316] Even its acceptance in Belgium and Netherlands were because of weaker religious belief and higher education level as compared with Turkey, Romania, and Malta.[317]

2.4.2.4 Palliative Care is Alternative to Euthanasia

Palliative or Hospice Care can be a good solution to the problem of terminally ill patients; where it can control their fear, anxiety, pain, and symptom especially at the end of life. Dying patient can be managed through the practice of palliative care, with the help of analgesic and pain-relieving drugs like morphine and it will ensure patient get attention and care in the process of their death.[318] Palliative care always encourages a patient that no matter the situation life is still worth living, it brings hope to the dying by assisting them to manage their pain.[319] It assists the terminally ill patient to relate to families and friends without making them feel that their burden is being shouldered

[314] Erin V. W. Andrew et al., "Social-Cultural Factors in End-of-Life Care in Belgium: A Scoping of the Research Literature.," *Palliative Medicine* 27, no. 2 (2013): 131.
[315] Steck et al., "Suicide Assisted by Right-to-Die Associations: A Population Based Cohort Study."
[316] Merrill, "Attitudes On Euthanasia and Physician-Assisted Suicide Based on Age , Gender , Religion and Level of Education in Muskegon County." 5.
[317] Cohen et al., "European Public Acceptance of Euthanasia: Socio-Demographic and Cultural Factors Associated with the Acceptance of Euthanasia in 33 European Countries." 15.
[318] Joe Loconte, "Hospice Care Can Make Assisted Suicide Unnecessary," in Euthanasia Opposing View Point, ed. David M. Haugen Devid L. Bender, Bruno Leon, Bonnie Sxumski (California: Greenhaven Press Inc., 2000), 96.
[319] Kevin G. Behrens, "Assisted Dying: Why the Argument from Sufficient Palliation Fails," *South African Journal of Philosophy* 36, no. 2 (2017): 186.

by anyone. Evidence has shown that one of the major reasons for the quest for euthanasia is the fear of becoming a burden to the family and friends.[320]

Palliative care becomes deeply rooted in the healthcare system. For instance, during the interview session in Nigeria, one of the respondents who is a medical doctor confirmed that he was never taught anything about palliative care throughout his medical training. The other respondent stated that palliative care is not even part of the medical school curriculum. This view was supported by the call of the Nigerian Minister of Health on the National University Commission (NUC) to include palliative care into the university curriculum for medical colleges.[321]

Palliative care is the only option to terminating life as a final solution to pain and symptom management.[322] Thus, the establishment of palliative care system units especially in Nigeria should be acceptable to the patients and it will equally serve as an option, in addition, to cushioning the fear of the practice of euthanasia.[323]

It must be noted that from the above views, what triggers agitation for euthanasia is the development and contribution of science to the practice of medicine. Many patients who could have died long ago were rescued and kept alive for a long time. However, the process creates serious ethical and human rights issues, the proponents of euthanasia avoid blaming the technology because medical doctors cannot escape liability for not using the necessary medical technology to save a life.[324] The implication of the process is that it complicates the dying process, but certainly makes

[320] Oniha Eraze and Mabel Oniha Osato, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria," Nigerian Law Guru 20 (2015): 11.
[321] Kuni Tyessi, "Curriculum: NUC To Include Palliative Care For Training Of Nurses, Doctors," *Leadership*, 2016. http://allafrica.com/stories/201602091366.html Accessed 23/10/2017
[322] Steck et al., "Euthanasia and Assisted Suicide in Selected European Countries and US States." 18.
[323] Technologies, "Report from ' Euthanasia and Assisted Suicide : Lessons from Belgium ."13.
[324] Omonzejele F.P, "African Ethics and Voluntary Euthanasia"," *Journal of Allergy and Clinical Immunologoly* 23, no. 3 (2004): 673.

humans not to be helpless in the most complicated medical problem like cardiac arrest. Technology now brought the capacity of interrupting the natural process of death; thereby making the patient suffers the effect of such modern technology. Therefore, in view of the numerous advantages permitting euthanasia will bring (if there is effective regulation) doctors will be out of their dilemma fear of violating the law. However, the oppositions rejected that instead of the proponents to argue for the better use of these technologies, they decided to align themselves with a more inhuman act of taking life. The opponents, on the other hand, insist that subjecting the terminally ill patient to pain and distress is more inhuman than terminating life.

2.5 Refusing Lifesaving Treatment

Refusing lifesaving treatment is a right recognised in most of Commonwealth jurisdictions, including Nigeria.[325] However, to what extent would this right be exercised and what is its implication particularly in respect of withholding and withdrawal of life support?

Two ethical questions arise here, whether; one has a right to refuse lifesaving treatment because the treatment is too burdensome or where one can request for the withdrawal of life intervening treatment to end life. If the law accepts these practices is like endorsing the practice of euthanasia. It must be noted that the practice of euthanasia could be active or passive. This practice is a passive euthanasia, what another researcher[326] called permissible and non-permissible euthanasia.

[325] Masaka Dennis, "A Theoretical Defense of Voluntary Euthanasia in the Context of AIDS," *Journal of Sustainable Development in Africa* 12, no. 5 (2010): 52.
[326] Edwards, "The Moral Step Back."45.

One of the contentions here is that if you will allow a person to take a decision that will result in his death; you can as well allow somebody to assist him to die. Singer[327] took the consequentialist idea that all you need to look at is the consequences of both actions, not the means of achieving the result. In both situations, the action leads to death.[328] Although the US Supreme Court made a clear distinction between the two situations, yet the argument still goes on among scholars in the field of medicine and law. At the centre of the argument are the cases of *Pretty v. DPP*[329] and *Ms B v.An NHS Hospital Trust*[330] wherein the first case the court refused to allow Pretty to be assisted to die but allow Ms B the right to withdraw treatments which lead to her death. The law here recognised the situations to be different, but Singer continues to argue that a legal doctrine has been built based on "two separate rules of law" the right to refuse medical treatment and the illegality of euthanasia. He said it will never make any sense from ethical perspectives.[331] The rules-based ethics shall be dropped to look at the consequences of both actions. One shall not be allowed and refused the other, is a distinction without a difference. This support the researcher's view that is not in all cases a person will be allowed to refuse medical treatment if it will lead to death, some factors must be taken into consideration: for example, the mental condition of the patient and the psychological trauma which may influence a hasty and irrational decision.

[327] Boyd K M., "Mrs Pretty and Ms B," *Journal of Medical Ethics* 28, no. 4 (2002): 211.
[328] Paul Carrick, "Phylosophy and Medicine," in Medical Ethics in Antiquity: Philosophical Perspectives on Abortion and Euthanasia (Springer Netherlands, 1985), 245.
[329] Regina (Pretty) v. Director Public Prosecution (Secretary of state for the Home Department Intervening) UKHL 61
[330] Ms B v An NHS Hospital Trust EWHC 429 (Fam) (2002).
[331] The General Medical Council, "Treatment and Care towards the End of Life," 2010.

Keown[332] supports the argument of Singer, about lack of difference between refusing medical treatment that leads to death and request for withdrawal of life support that will also lead to the death. This undermines the intention of the law to protect life and prohibit euthanasia. He further argued that the wish or request of any of such patient shall not be respected. He insisted that the intention of the law is to defend the sanctity of life, and if that is the intention of the law, the court has shuttered the dream of the law by allowing the right to refuse life-saving treatment which to him appears to be wide enough to cover suicide and assisted suicide.[333]

This researcher shares the same view with the above learned scholars (Keown and Singer), relating the situation with the case of *MDPDT v. Okonkwo* where the Nigerian Supreme Court exonerated a doctor for not taking medical measures to save the life of a patient, simply because that is the wish of the patient. The woman, in this case, was in a serious medical problem that requires blood transfusion and she happened to be a Jehovah witness who did not on the ground of faith believed in blood transfusion. This is even if the refusal will lead to the death of the patient. Realising that, the doctor discharged her and she went to another hospital, where Dr. Okonkwo accepted to assist considering her religious belief knowing fully that the only solution to her problem is transfusion. She died for failure to be provided with blood transfusion and a case of professional misconduct was brought against him. The doctor was found guilty and suspended from practice for not saving her life and allowing his religious belief to influence his decision. The Nigerian Supreme Court discharged and acquitted him

[332] John Keown, "The Case of Ms B: Suicide's Slippery Slope?," *Journal of Medical Ethics* 28, no. 4 (2002): 2.
[333] Boyd, "Mrs Pretty and Ms B." 216

because it is the patient right to refuse medical treatment even if that will lead to her death.

It will be correct to imply that where a patient request for treatment to be withdrawn even with an obvious result of death, the action will be valid. Otherwise, the Court only consider the means rather than the result of the actions as suggested by Singer and Keown, which has no moral difference at all. Beside Nigerian law has prohibited any act or omission that has the effect of hastening anybody's death and anybody found guilty will be punished for murder.[334]

It will be the researcher's humble opinion that in the above case if the doctor carried out the transfusion and save her life he should not be guilty of any wrongdoing because he has a duty to save her life in the circumstance even though her right conflict with his duty.[335] A similar case happened in *Georgetown College v. Jones* in the US,[336] in the case a university hospital requested for an urgent court order to allow blood transfusion of a Jehovah Witness patient and the court refused based on her right to refused medical treatment. The college Attorney appealed against the ruling instead of respecting the patient right to refuse medical treatment as in the Nigerian case above. The judge visited the *locus* to see the patient for himself. He immediately ordered for the transfusion to be done. The judge believed that a patient who has loss up to 60 % of blood is lacking in decisional capacity. He added that since the lady has a seven months child, her decision to refuse treatment will cause the abandonment of the baby

[334] Davies, Marie, and Cooper, A Companion to Bioethics Blackwell Companions to Philosophy. 15.
[335] Andreas-Holger Maehle, *Doctors, Honour and the Law: Medical Ethics in Imperial Germany* (New York: Palgrave Macmillan, 2009), 95.
[336] Georgetown College v. Jones F.2d 1 (1964) 331.

which the state has the power to stop. Accepting her refusal will place both the hospital and the doctors at the risk of legal liability.

Is true a patient that is in serious medical condition may lack the decisional capacity to make a rational decision. If making euthanasia illegal is to protect life, refusing treatment that leads to death shall also be illegal. Therefore, the Supreme Court of Nigeria opens the door recognition of euthanasia in Nigeria.

The following subheading discussed another legal issue which this research considers as part of the practice of euthanasia.

2.6 Withdrawal and Withholding Treatment

General Medical Council[337] defined an act of withdrawing or withholding treatment, where the life-saving treatment is not needful, or it becomes burdensome on the patient and it is withdrawn or withheld.[338] It means that the treatment will be withheld or withdrawn and allow the patient to die of the natural cause of his illness. These include withdrawal or withholding of Mechanical Ventilation, Renal Dialysis, Chemotherapy, Vasoactive Drugs, Antibiotics or Artificial Nutrition and Hydration.

The Malaysian Medical Association defines it as follows:

> "Withholding or withdrawal of life support is the process by which various medical interventions are either withdrawn or withheld with the expectation that the patient will die of the underlying disease."[339]

From the above definition where the life support is withdrawn the cause of death is the illness. However, if the patient should remain on the life support he will continue to

[337] The General Medical Council (GMC) is the statutory regulator for the medical profession in the UK
[338]General Medical Council, "Withholding and Withdrawing - Guidance for Doctors," *Archived GMC Guidance*, no. August 2002 (2010):15.http://www.gmc-uk.org/guidance/ethical_guidance/end_of_life_care.asp Accessed 15/10/2017
[339] Nemie, Kassim, and Adeniyi, "Withdrawing and Withholding Medical Treatment; A Comparative Study Between the Malaysian, English and Islamic Law." 12.

live for long. The implication is that withdrawing the support hasten the death of the patient.

Furthermore, it is clear that one of the building mechanisms of the body is water and food.[340] Many doctors and ethicist are of the view that dehydration and feeding make part of the basic care of the body; stopping or removing them is enough torture. Withdrawing it also has the effect of hastening death which brings about the discussion of its role on the question of death and dying and the end of life decisions.[341] It is worth commenting here that in developing countries like Nigeria, where healthcare system is at its bad shape,[342] people cannot afford basic healthcare provisions much less being admitted at Intensive Care Unit (ICU) and put on life-saving treatment. Dialysis cause about 25, 000 Naira per session and a patient may require at least three sessions in a month. How and where will an ordinary Nigerian get that kind of money, when evidence has shown that about 80% of the Nigerians' earning is spent on food with nothing left for healthcare. The implication of this is that where a patient cannot afford healthcare services he has to go home and wait for death which is more or less like euthanasia. However, respondent nine said that the ICU in the Nigerian hospital run at lost, because once a patient is admitted the machine will not be removed on the ground of inability to settle the bill: According to respondent nine:

> "…*you know healthcare here is out of pocket that is the reason why ICU always is not making any profit, because once somebody is there you cannot throw him out because he has not paid, so this is the issue, they are always operating at a loss….*"[343]

[340]Israelachvili J.and Wennerström H., "Role of Hydration and Water Structure in Biological and Colloidal Interactions.," Nature, (1996):27.
[341] Battin, Ending Life : Ethics and the Way We Die, 215.
[342]Asuzu MC, "Commentary: The Necessity for a Health Systems Reform in Nigeria," *Journal of Community Medicine and Primary Healthcare* 16, no. 1 (2005): 1.
[343] Interview with Respondent Number 9 at his office 17/4/2017

The above respondent is of the view that even if the life support could be withdrawn it will be for another reason, not a financial reason. It must be noted that many believe withdrawal or withholding of treatment has a clear difference with refusing treatment or doing any positive act to end life.[344] In the withdrawal, the treatment must have started before it is withdrawn because there is no progress or is becoming overburdened. The patient or the guardian may accept to withdraw it. On the other hand, withholding treatment is when an assessment is made on the workability of admitting a patient into ICU, where the patient will be assisted with machines like respirators and ventilators. Scholars always relate them to passive types of euthanasia. For instance, Rachel stated:

> "The distinction between active and passive euthanasia is thought to be crucial for medical ethics. The idea is that it is permissible, at least in some cases, to withhold treatment and allow a patient to die, but it is never permissible to take any direct action designed to kill the patient."[345]

The above arguments coincided with the postulations of Equivalence and Non-Equivalence Thesis, (ET/NET). In this theory, an attempt is made to ethically analyse the differences and the consequences of withdrawing and withholding treatment.[346] Ethical analysts are of the view that there is equivalence in the withholding and withdrawing of treatment, although the majority of clinicians disagree and hold a contrary opinion that the two are not equal. Using resource allocation as an example that if an assessment is made and treatment withheld, the available resources can be

[344] Erwin Stolz et al., "Determinants of Acceptance of End-of-Life Interventions: A Comparison between Withdrawing Life-Prolonging Treatment and Euthanasia in Austria.," *BMC Medical Ethics* 16, no. 1 (2015): 81.
[345] James Rachels, "Active and Passive Euthanasia," *The New England Journal of Medicine* 292, no. 2 (1975): 78.
[346] Dominic Wilkinson and Julian Savulescu, "A Costly Separation between Withdrawing and Withholding Treatment in Intensive Care," *Bioethics* 28, no. 3 (2014): 127.

used for cases with more chances of survival. Just like the *principle of triage*[347] under medical practice which is a principle doctors employ in situations like that, respondent number eight stated:

> "*We do something called triage, where you look at the patients with a more severe situation and need more help than another patient, so you have to categorise the patients into groups, those who will survive with your intervention and those even if you intervene they will not be able to make it, for example, the use of ventilators, some patients may need the ventilator than others, you look at the one who will survive with your interventions and leave the rest. There are so many ways of resuscitating patients if they still chance of surviving by putting them on the respirators and the rest of supports, where they will be taking to ICU to monitor their blood pressure and breath*"[348]

However, this argument seems to be absurd because starting the treatment will give doctors a better opportunity to access the situation more closely rather than giving up without trying. It also prevents preventable death by not withholding treatment; there is every chance that a patient may survive the ICU.[349] A scenario was given of an ICU Consultant who was called to access a case of a patient with right sided Pneumonia, who cannot breathe. When the consultant asked his supporting staff to stay with the patient while he contacted the patient's family, they misunderstood him and admitted the patient to the intensive care unit. His wife believed that he would not want to receive intensive care treatment and the consultant decided not to admit the patient. Unknown to him the patient has already been admitted by his colleagues, the patient's breathing stabilised and the consultant was not willing to withdraw treatment.[350] The above scenario contradicted the so-called equivalent thesis because the consultant was

[347] Triage is a principle applied during emergency with many patients requiring medical intervention. "Triage" is a process use to assess patients' severity of injury or illness within a short time during admission and treat patient based on priority.
[348] Interview with Respondent Number Eight at the office 20/3/2017
[349] Dieter Birbacher Edgar Dahl, Giving Death a Helping Hand Physician-Assisted Suicide and Public Policy. An International Perspective, (Neitherlamds: Springer, 2008),27.
[350] Wilkinson and Savulescu, "A Costly Separation between Withdrawing and Withholding Treatment in Intensive Care." 113.

willing to withhold treatment, but reluctant to withdraw where the treatment has started, which means withholding and withdrawing is not ethically and legally equivalent. It also means life may be rescued if admitted in ICU because research has shown that 25% of the patient admitted into ICU died and 99% died just because of withholding or withdrawing treatment.[351]

The two situations are all related to the question of autonomy and right to self-determination. The above debate gets overheated here because the consequences of withdrawing or withholding such life support will obviously lead to death. Even at the heat of the debate, one important issue that comes to mind is that, if it is a right of a consenting adult, majority of those on life support lack capacity to either accept or refuse the treatment. According to Rachel:

> "The cessation of the employment of extraordinary means to prolong the life of the body when there is irrefutable evidence that biological death is imminent is the decision of the patient and/or his immediate family. The advice and judgment of the physician should be freely available to the patient and/or his immediate family."[352]

Therefore, if the concerned individual is incapable of given consent his next of kin or immediate family shall step into his shoes.[353] It must, however, be noted that it is difficult to accept the wishes of the patient in the absence of advance directives or where the legal system does not provide for substituted judgment. Although, it will be another issue whether withdrawal or withholding such assistance will be considered as a treatment or as an alternative to active euthanasia. Some scholars like Somerville has already made her position clear that euthanasia can never be considered as a treatment.

[351] Metcalfe MA., Sloggett A., and McPherson K., "Mortality among Appropriately Referred Patients Refused Admission to Intensive-Care Units," Lancet 350, no. 9070 (1997): 7.
[352] Rachels, "Active and Passive Euthanasia." 25.
[353] James E. Mark, Source Book on Medical Law, Library, 2nd ed. (London: Cavendish publishing limited, 2002),14.

Although she agreed to the withdrawal of life support in certain situations.[354] Rachel opined that if allowing the withdrawal or withholding of treatment is to let the patient die due to a hopeless situation, it will be better to actively hasten his death. This is because situations have shown that sometimes withdrawal is much more painful than lethal injections. He gave a scenario of a throat cancer patient who is in excruciating pain that is not possible to provide him with relief. He is confirmed to die within some weeks, and he would not want to keep living in such pain. He requested doctors to end his suffering. The doctors agree to stop treatment since they can do so, but not to actively hasten death. However, their justification will be that the patient is in pain and since he is going to die anyway, it will be wrong to keep prolonging his life unnecessarily. In withholding his treatment to end his life the pain will be longer and more painful than if he is given an active injection to end it.[355]

This argument was used as a justification that active euthanasia is far better than passive euthanasia once both aimed at ending life. Scholars, uphold that both withdrawal and withholding treatment is euthanasia because they produce the same result.[356] It was further argued that it is even wrong to assume withdrawal of life as an omission rather than an act which may not be interpreted as euthanasia, but if the intention of both patient and the doctor is to end life there is no moral difference whether it is through action or omission. Besides, even in the omission, there are some elements of actions. The most important question is the intentions of the people involved not the means through which it is done, and by permitting it, the court has

[354] Donald J. Boudreau and Somerville, "Euthanasia Is Not Medical Treatment." 112.
[355] Rachels, "Active and Passive Euthanasia."68.
[356] Vincent J.L., "Passive Euthanasia.," *Annals of Internal Medicine* 92, no. 6 (1980): 865.

thrown its weight on the consequentialist argument like Singer who continues to support euthanasia.[357]

The reason leading to the argument to withdraw treatment is based on cognitive functioning, self-control and self-awareness.[358] This is a Utilitarian belief on bioethics that personhood has certain degrees capable of being measured as something of quality. This is widely called the "quality of life" which abandoned the patient's lifetime history and ignored the fact that the person lived for more than a moment of time. This idea leads to a shift from right to die to a duty to die, an irrational thinking that "let the elderly give the young the way." A story was related of an elderly minister of about 85 years with a dementia problem who became a source of the problem of caregivers in a nursing home. The doctors and the nurses decided to end his life by taking off his pacemaker and end his life, simply because that will bring ease to the family. This is what the result of allowing withdrawal of treatment will lead society into without regulation. Therefore, is going to be difficult even determining whether a person is not of the good quality of life to warrant terminating his life or not. Good quality to party A may not be to party B, because there is no criteria to be used in measuring the good or bad quality of life. In the case of Nigeria, the only factor that will make the practice to be recognised is a necessity.

2.7 Doctrine of Double Effect

Double effect is a doctrine acceptable in medical and legal parlance (in some jurisdictions).[359] It is a situation where a doctor administers some drugs with life shortening effect for the purposes of reducing pain. Although the act has the effect of

[357] Singer, *The Cambridge Textbook of Bioethics*,111.
[358] Dennis Sullivan, "Euthanasia versus Letting Die: Christian Decision-Making in Terminal Patients.," Ethics & Medicine : A Christian Perspective on Issues in Bioethics 21, no. 2 (2005): 109.
[359] Vacco v. Quill, 521 793 (1997).Washignton V. Glucksberg, 138 838 (1997).

hastening death, even when death was not intended, but death is the necessary consequences of the act.[360] In this regard, the intention of the doctor is not terminating life but relieving pain, although he is aware of the fact that death will be caused.[361] This doctrine is not acceptable because it constitutes one of the elements of murder under English law. Doing an act with the knowledge that the likely consequences of such actions will be death, amount to murder. However, in respect of the *doctrine of double effect* the position is different where the concept is recognised and accepted. There is no law in Nigeria that recognise or accept the doctrine of double effect. Therefore, any act that leads to death though without intention if the doer of the act knows death will certainly follow his action is guilty of culpable homicide punishable with death.[362] From the reaction of the respondents in this research, the doctrine is not practiced in Nigeria. All the doctors (respondents) are unanimous about this position. Respondent eight stated thus:

> "*Is illegal and is not a legal practice in Nigeria and you are not licensed to take life, you are only licensed to save life as much as possible within your power if you know this will hasten the patient's death you don't give such drugs. There are some drugs that the effect they have to cure the patient may become toxic once you go a little above the dose the patient can die, that is why just an ordinary doctor is not allowed to give them to the patient. Doctors are not allowed to give any drugs that can hasten death in Nigeria*."[363]

The above view of the respondent is evidence that the doctrine is not an acceptable practice in Nigeria in view of its criminal implication, because one may argue that the

[360] Stuart Beresford, "Euthanasia, The Right To Die And The Bill Of Rights Act," *The Human Rights Research Journal* 3 (2005): 5, http://www.victoria.ac.nz/law/centres/nzcpl/publications/human-rights-research-journal/publications/vol-3/Beresford.pdf.
[361] Lawrence Masek, "Intentions, Motives and the Doctrine of Double Effect," *Philosophical Quarterly* 60, no. 240 (2010),567.
[362] Section 222 Penal Code (Law of the Federation of Nigeria, 2004).
[363] Interview with Respondent Number Eight 20/3/2017

intention leading to criminal responsibilities in homicide cases is the knowledge of the consequences of one's act resulting to death.

The *double effect doctrine* has its origin from Catholic principles, from Saint Thoma's view on murder and self-defense.[364] It is applicable to many areas of medical ethics, like the kind of abortion to be considered morally acceptable. It represents the Vatican's view on the differences between allowing the use of morphine to relieve pain even though it may hasten death. This is taken as an unavoidable consequence and prohibition of the use of lethal drugs to relieve pain though it may cause death. It has at the same time represents Catholic's view that the condition can warrant withdrawal or withholding of life-saving treatments which have the consequences of causing death. However, even in the Catholic ideology, there are acceptable conditions that must be satisfied for one to benefit from the defense, they are as follows:

> "(1) The act itself must be morally good or at least indifferent. (2) The agent may not positively will the bad effect but may merely permit it. If he could obtain the good effect without the bad effect, he should do so. The bad effect is sometimes said to be indirectly voluntary.
>
> (3) ...The good effect must be produced directly by the action, not by the bad effect. Otherwise, the agent would be using a bad means to a good end, which is never allowed.
>
> (4) The good effect must be sufficiently desirable to compensate for the allowing of the bad effect"[365]

A critical analysis of the conditions listed above, they leave much to be questioned. If an action can lead to loss of life what morality will be found in such an action? Why will somebody permit a morally wrong act in anticipation of the result that will be too

[364] Marquis D B., "Four Versions of Double Effect," *Journal of Medicine Philosophy* 16, no. 5 (1991): 515.
[365] Rita L. Marker, "End-of-Life Decisions and Double Effect: How Can This Be Wrong When It Feels So Right?," *National Catholic Bioethics Quarterly* 11, no. 1 (2011): 99.

bad? One of the scholars remarked that[366] if good is derived from evil, it means evil can be done to achieve good, which makes the act not morally acceptable. The conditions will continue to be debated, but one good example given is the killing of the innocent civilian in a war, is considered a necessary evil. The same thing with the self-defense argument, according to Saint Thomas, the death of the aggressor is not the intention of the defendant; it is an effect of his defense, not the defense itself. The action may have some justification because although the action is bad, is not intended but permitted. It is this researcher's humble opinion that allowing this practice is not any different from permitting euthanasia. In fact, in euthanasia the law may be able to regulate, however, in this case, it will be difficult to regulate. If this practice is allowed in Nigeria it will make the argument for recognising euthanasia in Nigeria stronger.

However, patients suffering from cancer and other serious terminal illnesses sometimes are necessary to give them the overdose of morphine to relieve them of the pain. The risk involved in such an act cannot be avoided, as it causes respiratory problem thereby hastening death. This is called pain management, sometimes is one of the things palliative care does. However, sometimes their pain cannot adequately be managed for the fear that it may cause death which as stated above is a crime in some jurisdiction like Nigeria. Therefore, what this doctrine preaches is that where death results in trying to relieve pain, there will be a good justification.[367] This also like all other end of life decisions will continue to be debated. One of the arguments is that, if it will be wrong for doctors to harm or terminate their patient's life, the doctrine of double effect will as well be wrong. The born of contention is the intention of the actor because *men's rea* (intention) is the cornerstone of every criminal responsibility. Only

[366] Joseph Boyle, "Toward Understanding the Principle of Double Effect," *Ethics* 90, no. 4 (1980): 527.
[367] Davies, Marie, and Cooper, *A Companion to Bioethics Blackwell Companions to Philosophy*,263.

that under English common law knowledge of the consequences of an act is what constitutes the intention. However, some scholars said that if pain cannot be managed it will also be wrong to leave the patient in an extreme and excruciating pain or be compelled to endure the pain in the fear of hastening their death.

The doctrine will have a serious problem in developing countries like Nigeria because is a practice that requires a lot of scrutinises as intentions are matters of the mind and that it will not be abused. However, if a good control system will be put in place, the practice will not be abused.[368] A proponent of the doctrine argued that what happens resulting in a death, is the side effect of the treatment and that every treatment has a potential side effect. Respondent six, a medical doctor indicated that sometimes doctors make use of the side effect of certain drugs. He stated that:

> "*Is just like I explain now that you are given a drug to cure an illness but the medicine ended in curing another ailment so you are trying to alleviate pain but the drugs are causing another thing which might lead to death, this is applicable to every drug, is like the drug is being used for the purpose that it has not been meant for and you are not using it in the dose that is the primary aim of the drugs…* "[369]

By implication, it means that doctors can use any drug to alleviate pain so long as the intention is not to cause harm or loss of life. The respondent's view further corroborated the argument that drugs with the effect of relieving pain may or may not cause death; it all depends on the dosage. Evidence available is so overwhelming showing that Morphine, for example, has the effect of hastening death and that is what caused restriction of its production and its availability.

The *Doctrine of double effect* has been used as a defense for murder by doctors to escape conviction. However, if an argument will be made to show the double effect as

[368] Jackson, Medical Text, Cases, and Materials Law.75
[369] Interview with Respondent Number six at his office 12/3/2017

a defense to murder, those in the practice of palliative care will not accept it, as it portrays them as murderers. There is the recent development that pain can be managed through the use of analgesic effectively without causing death. The fear is that the medical profession is the only profession that is practiced without public presence, unlike lawyers that practice law in court in the presence of journalist and other audience, how will the process be checked if double effect shall be allowed?

This research also considers the Islamic point of view and reflects its injunctions; if it allows the practices of the doctrine of double effects. The doctrine of double effect as it originated from the Catholic faith is not acceptable in Islam.[370] The question before any action is taken is, will the action cause undesired consequences or a desired one. In Islam whoever performs a good conduct will be rewarded ten times and evil will be equal to the evil done. Some Islamic scholars show the rejection of the practice of double effect doctrine, Al Zuhayli said:

> "Even if one does not perform the act of killing and do not aim to kill an individual, if one's action results with the individual's death, one shall pay Diyyat (blood money)".[371]

In further explanation of the above position, an example is given with a person who shots another person in the bush but intended to kill an animal, although this is a mistake of fact, an acceptable mistake that negates criminal responsibility. The accused must pay compensation or blood money, unless if the family of the decease forgoes it for him, nevertheless he is forgiven for retaliation. Harris[372] vehemently rejected the double effect doctrine because if your action can cause multiple results

[370] Farzaneh Zahedi, Bagher Larijani, and Javad Tavakoly Bazzaz, "End of Life Ethical Issues and Islamic Views," *Iran Journal of Allergy Asthma Immuno*l 6, no. February (2007): 5.
[371] Aksoy S., "Some Principles of Islamic Ethics as Found in Harrisian Philosophy.," *Journal of Medical Ethics* 36, no. 4 (2010): 226.
[372] Ibid.

and you know them all, you must accept the responsibility of such result. It is the general view in Islam that any act of killing will never go without responsibility, is either the killing is mistakenly done thereby making the culprit liable to pay Diyya (blood money) or it is intentionally done to make the person liable to Qisas (retaliation). Nevertheless, all Muslim scholars including Islamic Medical Association of North America (IMANA)[373] concluded that euthanasia is prohibited. They, however, agree that death is an inevitable event, yet treatment must not be provided if it only prolongs the end stage of terminal illness. Therefore, the implication is that Islam to some extent allows withdrawal and withholding of treatment if it merely prolongs life when death is inevitable. The difference between the belief in Catholic faith and Islam on the doctrine of double effect is that Catholic accepted the doctrine of double effect on the intention of the actor and the fact that death is the necessary evil of the pain control.[374] However, the Islamic position on any action leading to death depends on whether the act is intentional or by mistake in which case the actor will be asked to pay Diyyat but not completely exempted from punishment.

2.8 Right to Autonomy or Self-determination and Right to Life

Autonomy and self-determination are used interchangeably in this subheading. It means the right to control and take a decision regarding one's own body without interference so long as nobody is affected.[375] This section of the study connects the right to life as a responsibility of the government to protect. It as well considers the

[373] Shahid Athar and Hossam E. Fadel, *Islamic Medical Ethics: The IMANA Perspective., Jima,* vol. 37, (2005): 12.
[374] Liana C. Peter-Hagene and Bette L. Bottoms, "Attitudes, Anger, and Nullification Instructions Influence Jurors' Erdicts in Euthanasia Cases," *Psychology, Crime and Law* 23, no. 10 (2017): 983.
[375] Edwards, "The Moral Step Back." 122.

autonomy of individuals to decide, determine and control the time as well as the manner he chooses to die.

United State has always been in the forefront in the fight for freedom and liberty. For example, during the struggle for political independence from the monarch, freedom from the slave trade, civil rights of the employees from their employers (labour rights), and freedom against discrimination among others. Today America is faced with the challenges of lavish freedom such as the right to die in the name of autonomy and self-determination.[376] In 1981 US Supreme Court made an interesting pronouncement about autonomy.

> ''No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others . . .''[377]

Right to self-determination or autonomy is a right that gives the individual power of control to deal with his body including situation and the timing of his death.[378] Autonomy is related to ethics from the medical perspective; it is not related to succession or political independence from a particular country. It relates to ethics because it is viewed as a right a patient should determine what treatment to take, reject or even withdraw. However, where this right is being restricted is when the patient asks for a certain medical treatment that will cause death. In this case is not only the autonomy of the patient but also the guilt of the doctors where such practice is not legalised. In other words, if the right to choose when and how to die is accepted as lawful, it will exonerate the doctor from prosecution. Brock indicated that:

[376] John E. Ferguson, The Right to Die, (New York: Chelsea House Publishers, 2007), 35.
[377] Union Pacific Railway Co. v. Botsford, U.S. 250 (1891)141.
[378] Melanie Ann Radhika Selvalingam, "Physician-Assisted Death in England and Wales" (Newcastle University, 2014),110.

> "Self-determination is valuable because it permits people to form and to live in accordance with their own conception of a good life, at least within the bounds of justice and consistent with not preventing others from doing so as well. In exercising self-determination people exercise significant control over their lives and thereby take responsibility for their lives and for the kinds of persons they become … if self-determination is a fundamental value, then the great variability among people on this question makes it especially important that individuals control to the extent possible the manner, circumstances, and timing of their dying and death."[379]

The above point reveals the need to allow people to have control over their lives. No one should be forced to live a life where all hope is lost in the name of preserving the sanctity and sacred nature of human life. Determining what shall have priority between death and living shall be left to the individual person himself as of right. Literature buttress how the issue of this right is viewed by the court in the United State. For example, the case of *Nancy Cruzan*[380] who was a woman of 25 years of age got a serious injury in the year 1983 through a car accident. As a result, she got irreversible brain damage which leads to a permanent vegetative state. She was under a feeding tube as requested by her husband for a long time, but the condition has not changed a bit for years. She was surviving physically with the help of artificial nutrition and hydration. Six years after, when her parent assumed the position of her legal guardian, they requested for the withdrawal of the feeding tube to let her die. On the refusal of the hospital, the parent filed a suit against the Director of the Department of Health and the verdict turned out in favour of the parent that the patient's right to liberty which in this case means autonomy or self-determination is superior to the state interest to protect life. The court granted the order removing all life-prolonging machines.[381]

[379] Dan W. Brock, *Life and Death: Philosophical Essays in Biomedical Ethics* (London: Cambridge University Press, 1993),205.
[380] Nancy Cruzan v. Director Missouri Department of Health, US, 497 (1990) 261.
[381] Barryhe Rosenfeld, *Right to Die and Assisted Suicide*, 1st ed. (London: American Psychological Association, 2002), 34.

The judgment of the above court was solely on the testimony of Nancy's colleague who once said that she does not want to be left at the mercy of life-sustaining equipment. Although on appeal this decision was overturned because the testimony of the friend is not reliable. The inference one would make here is that had it been Nancy has a written advance directive regarding the manner she should be treated if found in this situation, the appellate court would not have overturned the decision. This showed how the right to self-determination and autonomy is accepted and recognised by the courts in the US. The argument of the Appeal Court is that there must be a clear and convincing evidence to enable a proxy decision to be taken on behalf of an incompetent patient.

However, when such evidence was obtained the court again granted the wishes of Nancy Cruzan to withdraw all life-saving treatment to let her die. The Health Department complied with the order of the court and withdrew all treatment; she died 12 years after the accident. Other subsequent decisions affirmed the right to determine what a person will want to do with his body and even extended the argument to cover other rights.

The interesting part of the decision is where the court said the patient right to autonomy is superior to the state duty to protect life. It will be assumed that even though the state has the duty to preserve and protect the right of its citizens to life, where a patient wishes to exercise his right to autonomy to determine the manner and time of his death, the state cannot stop him from exercising that right. John Stuart[382] argued in support of the above assertion that the only situation power of a state will be exercised legitimately is when it is used to prevent harm to others. By implication even where

[382] John Stuart Mill, On Liberty (The Floating Press, 2009):19.

section 33 of the Nigerian Constitution says nobody shall be deprived his right to life, it means the state can only stop the termination of life if the possessor of the right will be harmed. However, if the possessor of the right wishes to have his life terminated the state cannot stop him from doing it because he is doing no harm to anyone.

Two important cases *Vacco v. Quill* and *Washington v. Glucksberg* [383] reached the US Supreme Court on this issue, although with a different argument. The cases were initiated by a non-profit organisation in the name of Compassion in Dying from Washington whose sole aim is to assist a terminally ill patient to end their suffering. The case was filed to challenge the constitutionality of the Washington Promoting Suicide Law which criminalised assisted suicide. Among the plaintiffs are three terminally ill patients, although none of them survived to see the outcome of the case, and some were experienced medical doctors involved in the treatment of terminally ill patients. The born of contention was that the law that criminalised assisted suicide is contrary to Due Process and Equal Protection Clause of the 14th Amendment.[384] They argued that for the law to allow or recognised terminally ill patient the right to refuse life-saving treatment thereby hastening death and stop other terminally ill patients only because they are not under life intervening machines is discriminatory and a flagrant violation of the equal protection clause of the US Constitution.

Further argument relating to liberty which prohibited physician-assisted suicide is that the state overburdened doctors and the terminally ill patients in the enjoyment of their constitutionally guaranteed right. Reliance was made on some previous US Supreme Court decisions on abortion and personal right to refuse medical treatment. In the

[383] Vacco v. Quill, 521 793 (1997), Washignton V. Glucksberg, 138, 838 (1997)
[384] The Equal Protection Clause of the 14th Amendment declares, in essence, that all similarly situated individuals must be afforded equal rights and protections. The Due Process Clause, on the other hand, states that the government cannot interfere with the expression of any individual's rights.

cases, personal liberty was held to be free from any interference not even from the government, especially abortion which is a very free and personal decision.[385] In the case of *Roe v. Wade*[386] where US Supreme Court decided in support of abortion, it was not an absolute right, the reason was that another one may be harm by the exercise of such right.

In response to these arguments, the Attorney General of the State of Washington[387] replied that interest of the state to protect human life is superior to the claim of equal protection and due process clause. But a District Court ruled in favour of the plaintiffs that a law promoting suicide is unconstitutional because it violates 14th Amendment. Treating terminally ill patients differently and imposed the unnecessary burden on both the patient and the doctors in exercising their right to liberty. The Supreme Court unanimously held that the Washington Law prohibiting assisted suicide did not violate Equal Protection and Due Process Clause. The legal history of United State for over 700 years was in support of the prohibition of assisted suicide.[388]

This decision was viewed as hypocrisy.[389] If the system will allow withdrawal of life support or life-saving treatment that will ultimately lead to death, what difference will it make if the death is accelerated to avoid pain and suffering? The above decision of the US Supreme Court is an authority on the issue of the right to liberty, autonomy and self-determination. Although the Equal Protection and Due Process Clause of the 14th Amendment relating to many issues of human rights, that does not recognise right to die or to be assisted to die as presented and argued by the Compassion in Dying

[385] Maurice O Izunwa and Sylvia Ifemeje, "Right To Life and Abortion Debate in Nigeria : A Case for the Legislation of the Principle of Double-Effect ," African Journals Online, no. 2 (1992):36.
[386] Roe v. Wade US 410 (1973).
[387] Compassion in Dying V. State of Washington, 79F3d (1996) 796.
[388] Washignton V. Glucksberg, 138 838 (1997). 708
[389] Edwards, "The Moral Step Back." 75

Group.[390] The court further restated the argument that individuals shall have right to make choice in the exercise of their right to self-determination, however, it shall not be overstretched to include what has not been accepted since time immemorial in the United State.

Autonomy and self-determination become central to the debate for legalising euthanasia because it requires the voluntary request of the patient to end his life. The idea started from the belief that patient should have a say in the treatment that they receive from their doctors.[391] Doctors shall not be so powerful as to deny their patient a say in the decision- making process concerning their health.

The rule is that patients have the right to make a rational decision concerning their health. The case of *Ladan and Laleh*[392] is a good example, where the patients could take a decision notwithstanding the risk. They were two conjoined twins of 27 years old who died in the process of their separation. They have for the last 24 years been shopping for the surgeon to agree to conduct their surgical separation, all doctors refused to take the risk because it was unanimous that the operation was dangerous and risky.[393] It was risky because their brains are joint if they are successfully separated, there is the high risk of brain impairment.[394] The operation would have been successful if it was done during their infant stage because their organs were softer as

[390] Coggon, "The Wonder of Euthanasia: A Debate That's Being Done to Death."45
[391] Guy M .Widdershoven, "Beyond Autonomy and Beneficence: The Moral Basis of Euthanasia in the Netherlands.," Ethical Perspectives / Catholic University of Leuven ; European Centre for Christian Ethics 9 (2002): 96.
[392] Krzysztof Kobylarz, "Anaesthesia of Conjoined Twins" 46, no. 2 (2014): 124.
[393] Colleen Davis and Davis C., "The Spectre of Court-Sanctioned Sacrificial Separation of Teenage Conjoined Twins against Their Will.," Journal of Law & Medicine 21, no. 4 (2014): 973.
[394] Reuben Johnson and Philip Weir, "Separation of Craniopagus Twins," Cambridge Quarterly of Healthcare Ethics 25, no. 1 (2016): 38.

many of these kinds of surgeries were successful in the past. The medical teams were criticised for taking the risk only for them to become medical celebrities.

However, autonomy and self-determination allow the conjoined twins to take the risky medical decision which could lead to their death.[395] The question that was raised was whether the two sisters understood the enormous dangers in the decision they decided to take because they can understand the consequences of their action, nothing will stop them from taking such a decision even though dangerous. They both gave the instruction to go ahead with the operation no matter the consequences. It is on record that the cornerstone of any medical practice is consent and many court's decisions show that a doctor can be held liable for assault and battery for any medical practice without the consent of the patients.[396] Autonomy is the basis of consent, it is the autonomy right a patient has that give him the right to either accept, reject or withdraw from any medical treatment.

Right to life is enshrined in most of the Constitutions in the world. It is universal and acceptable to every society.[397] The implication of the right to life is protection against deprivation or termination of life, except through the process acceptable by the law. It is one of the basic human rights and the most controversial, especially during the 21st century. The controversy relates to linking the right with autonomy and self-determination. If in the exercise of his autonomy a person decides to terminate his life the state shall not stop him. Meaning that the state's duty to protect life is when others try to kill another, not when a person voluntarily decides to terminate his own life for

[395] Donald J. Boudreau and Somerville, "Euthanasia Is Not Medical Treatment."(New York, Pearson Prentice Hall, 2012),23.
[396] Colby, Unplugged Reclaiming Our Right to Die in America,2011.
[397] Ahmad Masum, "An Overview of the Right To Life Under the Malaysian," *Malaysian Law Journal* 6 (2008): 1–10. 13

whatever reason. Going by the argument of John Stuart[398] the only legitimate exercise of the state power is to prevent harm to others. It means criminalising euthanasia is not a legitimate exercise of the state power since the termination of the life is voluntary in the exercise of the right to autonomy of the patient and no harm is done to others by terminating it.

Fundamentally, if any patient requests for euthanasia and it is carried out, such a person shall not complain that the state fails to guarantee the protection of his life. This is because protection of the right to life is when one is deprived of the right by another. Recently, the Supreme Court of Canada[399] declared null and void the criminal prohibition of euthanasia in Canada. The court held that the prohibition constitutes a violation of Article 7 of the Canadian Charter of Right and Freedom dealing with the right to life. Article 7 is in *pari material* (similar) with Section 33 of the Nigerian Constitution also dealing with the right to life. By implication the interpretation suggested for Section 33 of the Nigerian Constitution by Eraze[400] on recognising euthanasia in Nigeria will now have a persuasive authority. In the decision of *Carter v. Canada* all the provision of the Criminal Code was declared null and void and of no effect.[401] It is argued that right to life under any constitution is not a duty to live and prohibiting euthanasia is a breach and violation of the right to life.[402] The court look at the situation of the patient that denying access to euthanasia is making the patient suffer unless he is allowed to have to terminate his life, the law is not fair to him.

[398] John Stuart Mill, *On Liberty* (The Floating Press, 2009):19.
[399] Carter v. Canada 51 SCR 331. (2015).
[400] Osato, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria."4
[401] Benny Chan and Margaret Somerville, "Converting the 'Right to Life' to the 'Right to Physician-Assisted Suicide and Euthanasia': An Analysis of Carter V Canada (Attorney General), Supreme Court of Canada," *Medical Law Review* 24, no. 2 (2016): 143.
[402] Margaret Somerville, "Lessons From Canada In The Battles About Legalizing Euthanasia: From Kindness To Killing," *Maria Law Review and Brigham Young University Journal of Public Law*, (2016): 3.

Besides, since it is in the exercise of the patient's right to autonomy it is nobody's problem if he chooses to end it as a means of finding final relief.[403]

Right to life is now argued to include right to die. This argument was also made in the case of *Pretty v. United Kingdom*.[404] The Court in rejecting the argument makes reference to the decision of the Canadian Supreme Court in *Rodriguez v. British Columbia (Attorney General),*[405] where it was held that denying the right to euthanasia is not a violation of Article 7 dealing with the right to life of the Canadian Constitution. However now that the Canadian Supreme Court overruled its previous decision in Rodriguez, one can argue that the European court may also change its decision to recognise the right to euthanasia as part of the right to life under Article 2 of the European Convention. Interestingly it was argued that failure of the Deputy Public Prosecution (DPP) to prosecute some cases of assisted suicide is assumed to be a recognition of the right to die where it is done at the request of the patient.

The decision of the Nigerian Supreme Court in *Okonkwo* is a step toward recognising the absolute nature of autonomy as a right to individual control of his time and manner of death. The implication of the decision is that the court only recognised the right to refuse or withdraw medical treatment. However, if the right to autonomy is the right to allow a person to make choice regarding his body and life, in general, is logical if this right is extended to allow him or her to determine when and how to die.

[403] Margaret Somerville, "Killing As Kindness: The Problem of Dealing With Suffering and Death in Secular Society," *Is Legalizing Euthanasia An Evolution Or Revolution In Societal Values?* volume, no. 1 (2016): 19.
[404] Regina (Pretty) v. Director Public Prosecution (Secretary of state for the Home Department Intervening) UKHL (2001) 61
[405] Rodriguez v. British Columbia (Attorney General) 3 SCR 519 (1993) 46

2.9 Conclusion

This chapter discussed the historical evolution of euthanasia. It reviews the practices of euthanasia in ancient societies such as Rome and Greek. Majority of the scholars in this societies opposed the practice of terminating life and viewed it as a condemnable act. However, they accepted that where a person is suffering from a serious illness and the treatment became fruitless, the treatment could be withdrawn to let him die. This was the beginning of the difference between active and passive euthanasia. These developments were later continued till the period of 19th and 20th century when the struggle for euthanasia took a different dimension. Thus, human rights groups proliferated and struggle for the legalisation of euthanasia in the name of human rights to autonomy and self- determination increased. When the struggle became tough they resorted to judicial struggle sponsoring cases in court to push for the practice. Very few countries accepted and legalised the practice, Netherlands, Belgium and Australia which will be discussed further in the next chapter.

Due to the need for determining the process of dying and death, this chapter also discussed the meaning of death and the dying process. It is important in view of the relevance it has in determining death especially now that euthanasia is being linked to organ donation. There is the need to know at what time one can be declared dead. Instead of allowing a patient to die and waste his organ while many need it to survive, once a patient is certified brain dead his organ can be harvested. This led to the major shift from the traditional meaning of death to the modern meaning of death.

Controversy over legalising euthanasia will continue among ethicist, doctors, lawyers and religious leaders. Every group has its own reason for holding one view or the other. In making euthanasia permissible, ethicist insists that it will lead to a slippery slope

and tarnish the image and reputation of the medical profession. They further relied on the fact that there is intrinsic value in human life; it is sacred and unethical to violate or take it away. From the human rights angle, it is argued by some right to die group and human rights activist that everybody shall be allowed to have absolute control over his body including when and how to die. A proponent of euthanasia argued that, if the law will recognise the right to refuse medical treatment that can even lead to death, it will make no difference if one is allowed to request for his death. They also argue that if a patient decides to exercise his right to autonomy he shall be allowed because in doing so he has done no harm to anyone. The argument on euthanasia is so overwhelming that it is one of the most controversial issues in the world.

The last part of this chapter shows that autonomy and self-determination can be linked to the right to life, even though the state has the duty to protect and preserve the life of its citizens. it is submitted that if a person in the exercise of his right to autonomy decided to take his life it will be a violation of his right to life to stop him. We have seen how a decision of the Canadian Supreme Court accepted this view and declare the Canadian Criminal Code prohibiting euthanasia as null and void and of no effect.

CHAPTER THREE:

LEGAL FRAMEWORK GOVERNING EUTHANASIA IN NIGERIA

3.1 Introduction

This chapter looks at the Nigerian legal framework on euthanasia. The constitutional and penal system protecting and preserving human life is discussed. The chapter also discussed other code of conduct for medical practitioners in Nigeria including the Islamic viewpoint on the concept.

Nigerian legal system originated from the English Common Law of England.[406] The source of the Nigerian law is derived mainly from the English system. The sources of the law include, the English Common Law comprising of the Common Law of England, Doctrine of Equity and Statute of General Application of 1900.[407] Other sources of the Nigerian law includes Islamic Law and Customary Law.[408] The system operates a Constitutional Government with about 36 states including the Capital Territory, each having the power to make law for the good governance of the people of the state.

Therefore, this is an area of the law that relates either to the custom or religion of the people of the state. The period before the amalgamation of 1914, the country is living

[406] Noel Otu, "Colonialism and the Criminal Justice System in Nigeria Colonialism and the Criminal Justice System In Nigeria," *International Journal* 4036, no. February 2012 (2011): 37.
[407] Charles Mwalimu, *The Nigerian Legal System: Public Law* (Oxford: Peter Lang, 2007),18.
[408] Obilade A O. *Nigerina Legal System* (Lagos: Sweet and Maxwell, 1979),35.

between Northern and Southern Nigeria each with a different way of life and legal system. After the amalgamation, the differences remain as a guiding principle for legal and other development. These differences influenced the laws regulating the different societies, particularly, in terms of the criminal justice system. Therefore, there are two dominant laws applicable in the different regions of Nigeria. Penal Code is the applicable law for Northern Nigeria which is predominated with the Muslim population and the Criminal Code for the Southern Nigeria with Christians as the majority. The two Codes were made by the Federal Government to allow recognition of the different lifestyle of both regions. However, under the Constitution states were given the power to make laws for the good governance of each state; all the states can adopt with the necessary amendment the provision of both Penal and the Criminal Code. Therefore, the Penal and Criminal Code are the two applicable laws in Northern and southern Nigeria respectively.

3.2 Constitutional Stand Point on Euthanasia in Nigeria

This section of the research shall discuss some salient provisions of the Nigerian Constitution relating to euthanasia. The aim is to see whether the provisions contemplate the recognition of the practice of euthanasia in Nigeria.

3.2.1 Right to Life

Right to life is the basis of all human rights; it is inherent in every human being.[409] Different scholars believe that human life is of divine origin and therefore beyond human capacity to dispose of. It is a right that is the most important of all rights,

[409] Christian Frodl, "Council of Europe , Parliamantary Assembly : Protection of the Human Rights and Dignity of the Terminally Ill and the Dying," 2003.

without which all other rights are meaningless.[410] This right is considered more sacred than other rights, however, despite the sanctity of this right, issues like abortion and euthanasia are gaining support day by day in many Western worlds.[411] Some countries have started enacting laws to permit euthanasia as part of human rights to autonomy and self-determination.[412] Right to life, dignity and personal liberty is the cornerstone of every discussion regarding euthanasia.

There are disputing views about right to life and euthanasia among all the philosophers. The right is said to have two different dimensions, positive and negative. The positive aspect includes exercise of the right to live, while the negative part is refusing to exercise the right, that is to die according to them. For example, positive aspect of the right like exercise of the right to association, means that a person can decide who to associate with. However, the negative refers to the person refusing to associate with any one. Sequel to this the proponent of euthanasia claim that right to life include the right to control one's life which include right to die. Furthermore, John Stuart Mill[413] is of the view that euthanasia is part of the individual right to liberty. He argued that every person is a guardian over his own body and therefore is part of human nature to desire to terminate one's life. John Stuart[414] maintained that government has no right to interfere with the individual right thereby stopping him from dealing with his own body as he so wishes. Therefore, government prohibition of terminating one's life is wrong and a violation of the right of the person.

[410] Katrina Haller, "The Right to Life" (Melbourne, 2015).2.
[411] Ronald Dworkin, *Taking_Rights_Seriously* (Cambridge: Harvard University Press, 1977),279.
[412] Atidoga D.F. and Shaba Sampson, "The Act of Euthanasia and Right to Life: The Nigerian Human Rights and Criminal Law Perpective," *Frontiers of Nigerian Law Journal* 2, no. 2 (2008): 250.
[413] Mill, *On Liberty*.20.
[414] Ibid.

However, other philosophers like Thomas Aquinas and Thomas Hobbes[415] believe that euthanasia violates natural law. All human beings have a natural wish to remain alive, therefore any act of violating this wish is unnatural and wrong. Hobbes argued that it is contrary to the wish of many human beings to have their lives terminated; therefore, the government should be seen as authority to protect the right to life of its citizens.

Consequently, it is on the view of Hobbes and Aquinas that every government has a duty to protect the right to life. There is no Constitutional provision in the world that expressly allowed the practice of euthanasia; even some of the scholars that argue in favour of the right to die only make analogous interpretation of certain sections of the Constitution especially the section dealing with human rights. The only Constitutional body responsible for the interpretation of the law is the court of justice and therefore, the case of euthanasia has not been forwarded to any court in the country. The case *MDPDT v. Okonkwo* relates to the issue of the right to refuse medical treatment by Jehovah Witness. However, this study supported the view of Peter Singer and John Keown[416] that permitting the right to refuse lifesaving treatment has similar implication with permitting euthanasia. Even in the US when the Supreme Court rejected the idea of euthanasia it held that it is beyond their powers to make a law that will allow euthanasia. However, an individual state may make the law allowing the practice of euthanasia.[417] According to the proponent of euthanasia Section 33 dealing with the right to life under the Nigerian Constitution suggests the permission of euthanasia.

[415] Jackson, "The Ethics and Legality of Euthanasia and Physician Assisted Suicide."10.
[416] Boyd, "Mrs Pretty and Ms B." 211.
[417] Karter Landon and Carla Shelton, State of Michigan Court of Appeals, 835 1–14 (2010).

Section 33 (1) of the Nigerian Constitution provides:

> "Everybody has right to life, and nobody shall be deprived his right to life intentionally save in execution of a sentence of a criminal offence which he has been found guilty in Nigeria, and he shall not be deemed to have been deprived the right to life if he dies as a result of the use to such extent and in such circumstances as are necessary for the defense of any person from unlawful violence or for the defense of property, or in order to effect a lawful arrest or to prevent the escape of a person lawfully detained or for the purpose of suppressing a riot, insurrection or mutiny."[418]

Section 33 of the Constitution of the Federal Republic of Nigeria does not suggest termination of life as provided under the exceptions. Thus, cases of euthanasia have not been established or by any necessary implication.[419] Neither do the sections include the right to die. Nigerian Courts[420] having the sole duty of interpreting the law, refused to go beyond the traditional meaning of the right to life to include other essential conditions of life. If the Court does not define the right to life to include a healthy environment or health, it will be difficult to assume that the section suggests termination of life. The Court restricts the meaning of the right to life only to its literal interpretation[421] which is a deprivation of life in a manner other than the due process of law.[422] Therefore it will be difficult to assume that Section 33 will be interpreted to include the right to termination of the life of a patient who is in pain.

[418] Section 33, *Constitution of the Federal Republic of Nigeria 1999*, Cap C 23 laws of the Federation of Nigeria 2004
[419] Lokulo-sodipo O. Jadesola, "An Examination of the Legl Rights of Surgical Patients under the Nigerian Laws," *Journal of Law and Conflict Resolution* 1, no. 4 (2010): 81.
[420] Bello v. AG Oyo State, 5 NWLR (1986) 828.
[421] Literal Interpretation of law is one of the principles of legal interpretation. Is where the law is given its plain meaning without imposing or suggesting a different interpretation other than what is in the text.
[422] Hakemli Makale, "Cross-Cutting Issues on The Right To Life in The Context of Law," *Hacettepe HFD* 5, no. 2 (2015): 117.

3.2.2 Right to Personal Liberty

A Similar position is a case where the Constitution in Section 35 requires a person to be allowed to exercise his right to personal liberty.

Section 35 also provides:

> "(1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law -
>
> (a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty..."

Consequently, liberty here does not include the permission for termination of life. The Court[423] in Nigeria has interpreted right to personal liberty to be a right that relates to situations where citizens are deprived right to engage in their lawful personal activities. The only situation where such right is violated is where a person is arrested and detained for over 24 hours without being charged to court, or more than the mandatory period during a criminal trial. The only place where this section relates to the patient is when secluding patient with the contagious disease for the purposes of their care or the purposes of protecting the larger society. This does not include terminating the life of the patient because he is extremely or terminally ill.

3.2.3 Dignity of Human Person

Human dignity entails the values and self-respect for the human person. This value is contained in Section 34 of the Constitution of the federal republic of Nigeria. Thus, this Sections suggested being interpreted together with other sections to presume

[423] Dokubo-Asari V. FRN 12 NWLR (2007) 360.

euthanasia in Nigeria. However, from the reading of the section euthanasia or termination of life cannot be presumed.

Section 34 (1)

> "Every individual is entitled to respect for the dignity of his person, and accordingly -
>
> (a) no person shall be subject to torture or to inhuman or degrading treatment;
>
> (b) no person shall be held in slavery or servitude; servitude; and
>
> (c) no person shall be required to perform forced of compulsory labour. (a) any labour required in consequence of the sentence or order of a court;
>
> (b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;
>
> (c) in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;
>
> (d) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
>
> (e) any labour or service that forms part of –
>
> (i) normal communal or other civic obligations of the well- being of the community.
>
> (ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or
>
> (iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly."

The lengthy provision of Section 34 is very explicit. The provision simply refers to the respect for individual dignity. The Court defines the scope of the Section to include

subjecting any person to slavery or servitude or be forced into forced labour.[424] The right is, in short, a protection against subjecting citizens to any kind of maltreatment.[425] The Nigerian Courts explain the right to dignity devoid subjecting a person to torture or any inhuman degrading treatment.[426] It may be assumed that is because no case dealing with termination of the life of a patient who is suffering from extreme pain in the hospital. However, this section is not anticipated to be interpreted to include terminating the life of a patient because of the extreme or hopeless health situation. The court will not accept this argument unless the law is amended to provide a better solution to a patient in such situation.

3.2.4 General Discussion on the Implication of Section 33, 34 and 35 of the Constitution

Having read the content of these Sections (33, 34, and 35) it can be concluded that reading the sections together do not suggest termination of life due to terminal illness and extreme pain. Even as argued that if Section 33 will be read together with Section 34 and 35 dealing with human dignity and personal liberty, the sections cannot be overstretched to include right to die with dignity thereby having the right to request for euthanasia.

The respondents unanimously agree and uphold the provision of this section. A question was put to them whether Section 33, 34 and 35 of the Constitution may be

[424] Uzoukwu V. Ezeonu 6 NWLR (pt. 200) 708 (1991).70
[425] Pyali Chatterjee, "Right to Life with Dignity Also Includes Right to Die with Dignity : Time To Amend Article 21 of Indian Constitution and Law of Euthenesia" *International Journal of Scientific Research in Science and Technology* 1, no. 5 (2015): 119.
[426] Kalu v Federal Republic of Nigeria and Others SC. NGSC 34 (2016)48.

given an interpretation to include euthanasia, as suggested by one scholar who argued that euthanasia is legal in Nigeria. According to respondent one:

> "*In Nigeria, I do not come across any legislation that allows the taking of anybody's life with due respect to the learned friend who opined that euthanasia is legal if a community reading will be given to Section 33, 34, and 35 of the 1999 Constitution is not correct. Section 33 guarantee the life of an individual, the right to take his own life is not in accordance with the law. I do not see how this section allows euthanasia, even if a community reading will be given to it, with Section 34 and 35*"[427]

According to the respondent (number one) even if the argument could be taken further as argued by the proponents that right to life shall include right to die if a reference is made to the Sections of the Constitution in Nigeria euthanasia cannot be permitted.[428] Section 34 only requires every individual to be treated with respect and dignity. The section is referring to his relationship with government authorities like the Police, Immigration and Drugs Law Enforcement Agents. This has never in Nigeria been interpreted to include the right to terminating the life of a person who is in a serious medical problem.

Respondent two agreed with the view of respondent one. Respondent number two said in the following words:

> "*Euthanasia is not allowed under the Nigerian law. The sanctity of life is what the Nigerian law protects. Section 33, 34 and 35 will not warrant anyone to take a life even if it is with the consent of the victim. Section 306 of the Criminal Code Act says is unlawful to kill anybody unless where it is prescribed by law or authorise by law, and I don't think or see any clear provision in which euthanasia is allowed. Section 34 and 35 provide for the dignity of human life and I don't think it contemplates a situation where somebody because his life has become worthless you should terminate his or her life, I don't think that is what the intention of the Section (33, 34, and 35) entails.*

[427] Interview with a Legal Practitioner, Respondent Number 1 at his Law Office 9/3/2017.
[428] Amos O. Enabulele, "The Right to Life or the Right to Compensation upon Death: Perspectives on an Inclusive Understanding of the Constitutional Right to Life in Nigeria," *Afe Babalola University: Journal of Sustainable Development Law and Policy* 973 (2007): 99.

> *To me what it intends is that every human life has value and human life has a certain right that is inalienable which are for every human person, those rights shall be given to every human person not that the situation I am in makes me less than a human being that life should be terminated*."[429]

According to respondent three:[430] added more to this view that euthanasia is never and will never be within the contemplation of the Nigerian law. He said that even in England this issue is controversial because the law does not allow such practice and it is from there that the Nigerian Legal System got its origin.

In India for example, the Supreme Court overturned the judgments given by a lower court on euthanasia. In the first case, the court ruled that right to life and liberty under Article 21 of the Indian Constitution include the right to die,[431] therefore, justify euthanasia or assisted suicide on the request of the person concerned. However, the court reversed the decision given earlier in another case[432] saying that right to life does not include right to die but respect the dignity of human person. Surprisingly, when the case of *Aruna Shanbaug v. Union of India*[433] started from the High Court and reached the Supreme Court, the question of euthanasia and right to die under Article 21 of the Indian Constitution was an issue. The Court considered the situation of the patient Aruna who was sodomised and was in a coma for over 30 years. The Court allowed the life support to be withdrawn which by implication passive euthanasia becomes legal under certain extreme conditions. However, the Court insisted that the issue should be taken to the Parliament for proper consideration.

[429] Interview with a Legal Practitioner, Respondent 2 at his Law Office 20/4/2017.
[430] Interview with Respondent 3 Associate Professor of law at his Office 16/3/2017
[431] Gyan kaur V. State of Punjab SSC 648, 2 (1996) 2.
[432] State of Maharashtra v. Maruty Sripati Dubal, Cri LJ 743 (1987)212.
[433] Aruna Shanbaug v. Union of India & other, SC 4 (2011) 454.

The Court went further to state that it will be wrong to suggest that Article 21 of the Constitution that is meant to guarantee and protect human life will turn to be the permission to destroy it.[434] However, since the Court allows passive euthanasia in the above case it also provided conditions under which it could be allowed. For example, where the patient is in a permanent vegetative state or the sickness becomes terminal without any chance of recovery or the case is hopeless. The Court provided also that the matter must be referred to the High Court in a petition to be signed by either the doctor or the family of the patient. Parent or spouse must consent to the withdrawal of the life support before it could be done. In case there is no parent no spouse, the next of kin or next friend. The following is the procedure provided by the Court:

> "(1). A special two-judge bench will be formed in every high court to decide applications seeking permission for euthanasia. (2). A committee of three reputed doctors from a panel constituted by the high court in consultation with the state government will examine the patient and submit its report to the high court bench. (3). Notices will be issued to all those concerned with the doctor's report attached. (4). After hearing everyone, the bench will give its verdict. The matter must be dealt with speedily as delays prolong the agony of the patient."[435]

The above Indian position allowed the practice of passive euthanasia under extreme conditions. However, vehemently rejected voluntary active euthanasia suggested under the right to life in Article 21 of the Indian Constitution. The said Article 21 is in *pari materia* (similar) with Section 33 of the 1999 Constitution of the Federal Republic of Nigeria. Therefore, this Indian Supreme Court decision is a persuasive authority to the Nigerian court whenever any case like this come before the court.

[434] Tanuj Kanchan, Alok Atreya, and Kewal Krishan, "Aruna Shanbaug: Is Her Demise the End of the Road for Legislation on Euthanasia in India?," *Science and Engineering Ethics*, (2015): 15.
[435] Aruna Shanbaug v. Union of India & other, SCC 4 (2011) 457.

However, the legal experience of Netherlands and Belgium regarding euthanasia is different from Nigeria and India. The law in these two countries (Netherlands and Belgium) is not about permitting passive euthanasia in form of withdrawal of life support, is about active and intentional termination of life on request due to pain and terminal illness.[436] Permission on the practice of euthanasia in these two countries is not passed through judicial decision as is the case with India. However, the decision in *Postma's Case* in Netherland it was held that is not the duty of doctors to prolong life at any cost. This may suggest permission to withdrawal and withholding of life support. Supporting this view is the recognition of the defense of necessity in Section 40 of the Netherlands Criminal Code and the opinion of the court in *Schoonhein*[437] that Section 40 is a good defense for doctors in such situation. Therefore, the legality of the practice is not anticipated from the constitutional provisions of these countries. Laws were passed by the parliament to permit the practice and an amendment was also made on the Penal Code and Criminal Code prohibiting the practice.[438] Therefore there was no argument regarding its legality since a legal framework was provided to permit and regulate it in 2002. One major difference observed between both countries is that in the Netherlands the law aimed at codifying the practice of euthanasia. However, in Belgium, the aim of the law is to regulate the practice of doctors on euthanasia.[439]

In Nigeria, a step is taken by the court towards recognising the right to terminate life in form of right to refuse live-saving treatment. The right was upheld by the Supreme Court in the case of *MDPDT v. Okonkwo*[440] A woman of 29 years old named Mrs.

[436] Cohen-Almagor, "First Do No Harm: Pressing Concerns Regarding Euthanasia in Belgium." 515.
[437] John Griffiths AlexBood and Heleen Weyers Amsterdam, *Euthanasia and Law in the Netherlands* (Amsterdam ISBN: Amsterdam University Press, 1998).61
[438] Herman Nys, "Euthanasia in the Low Countries: A Comparative Analysis of the Law Regarding Euthanasia in Belgium and the Netherlands.," *Ethical Perspectives* 9, no. 2–3 (2002): 73.
[439] Ibid. 74
[440]Medical and Dental Practitioners Disciplinary Tribunal v. Dr John Emewulu Nicholas Okonko,LPELR 1999 (2001) 213.

Okorie gave birth at a maternity hospital where she was admitted in 1999 before she was again admitted to Kanayo Specialist hospital. She complains of severe pain in her pubic area and difficulty in walking. The diagnosis revealed that blood transfusion is the only necessary and available treatment she could get. The patient and her husband rejected and refused the recommendation of the doctor. The doctor, one Mr. Okafor discharged the patient against medical advice, despite warning that refusal to undergo the transfusion the patient may die. After being discharged from Kanayo hospital, the patient was taken to Jeno Hospital and produced a document to Dr. Okonkwo that the patient directed that no blood transfusion be given even if that is the only option. This is against her wish as a patient and a believer of Jehovah witness who does not believe in such act because Bible has condemned it. The document is reproduced below:

> "I Martha K. Okorie, direct that no blood transfusions be given to me, even though physicians deem such vital to my health or my life. I accept non-blood expanders, such as Dextran, saline of Ringer's solution, hetastarch. I am 29 years old and execute this document on my own initiative. It accords with my rights as a patient and my beliefs as one of Jehovah's witnesses. The Bible commands: keep abstaining from blood' (Acts 15:28,29).
>
> "This is and has been, my religious stand for 6 years. I direct that I be given no blood transfusions. I accept any added risk this may bring. I release doctors, anesthesiologists, hospitals and their personnel from responsibility for any untoward results caused by my refusal, despite their competent care. In the event that I lose consciousness, I authorize witness below to see that my decision is held."

The patient's husband who is also one of the witnesses of the document referred to also produce another document signed by him reproduced below too:

> "To Jeno Hospital, and the medical and nursing personnel having anything to do with the case of Mrs. Martha Okorie (my wife). You are hereby notified and instructed that I do not wish any transfusion of whole blood, blood plasma, packed cells blood fractions or blood derivatives to be used in the treatment of this patient. I regard the transfusion of blood and blood products as unnecessarily dangerous treatment producing too many bad effects to justify the risk. It is also

> contrary to my faith as one of Jehovah's Witnesses. I recognise and understand that the attendant physicians have advised that they are of [the] opinion that blood transfusion is necessary perhaps [to] save the life of the patient. I do not share their opinion and adhere to the instructions given in this notice. This restriction leaves open the use by transfusion or otherwise of Ringer's lactate solution, glucose or other volume expanders not derived from blood. This matter has been carefully considered by me and my instructions are not going to change because I or the above named patient is unconscious. The hospital, the medical and nursing personnel caring for the above patient are hereby released from responsibility and liability of any and all untoward effects which flow from the decision not to accept the treatment prohibited in this release. Dated this 17th day of August 1991"

Dr. Okonkwo having read and understood the implication of the statement admitted the patient without the blood transfusion and the patient died thereafter. Dr. Okokwo herein the respondent was subjected to trial before the Medical and Dental Tribunal for two counts of charges. The first count was about negligence and conducting himself unprofessionally contrary to Section 16 of the Medical and Dental Practitioners Act.[441] In the second count, he was tried for conducting himself contrary to the famous Hippocratic Oath taking by all medical practitioners, a conduct contrary to the same section 16 of the Act. It was very glaring to him even from the record and the referral letter she came with, where she refused blood transfusion as the only available option to save her life but Dr. Okonkwo still accepted her in the same condition and refused to transfer her to a bigger hospital with more facilities where the case will be handled better.

The Tribunal convicted the respondent Dr. Okonkwo for his failure to administer life-saving treatment despite the outright refusal of the patient. The question raised was, what should a doctor do where his patient asked him to withhold any life-saving treatment since every treatment requires the consent of the patient? The Tribunals

[441] Masum, "An Overview of the Right To Life Under the Malaysian." 12.

insist that according to Medical Code of Ethics a doctor shall not allow his religious sentiment to influence his decision to safe life and that no matter what he shall try to save his patient life. Thus:

> "When therefore he is faced with a dilemma arising from the refusal to grant informed consent our Code of Ethics prescribes that a doctor faced with such dilemma has 2 options: (a) he can terminate his medical contract or; (b) refer him or her to another institution where necessary measures for the preservation of life may be taken."

After the doctor was convicted by the Tribunal, further judicial review was filed before the Court of Appeal. On the ground of the appeal to the Court of Appeal, the respondent was discharged and acquitted. The Court gave the reasons that the Code of Medical Ethics did not provide for what a doctor shall do in the absence of consent and with the combined effect of section 38 and 39 of the Constitution dealing with the right to conscience and freedom of expression a patient has a right to refuse any medical treatment. The Tribunal appealed to the Supreme Court and the Supreme Court unanimously affirmed the decision of the Court of Appeal.

This case does not guarantee the right to die even though many scholars make an argument that there is no moral difference between euthanasia and refusal to take the medication where failure to do so will lead to death. However, this argument relates to the discussion about the active and passive euthanasia. It is concluded that right to refuse medical treatment even though it will lead to death is different from active euthanasia where an active step will be taken to shorten the life of the patient.[442] This decision has further confirmed that respect for autonomy and or liberty which is the basis of permitting euthanasia is recognised by the Supreme Court. This decision suggests that there is the need to revisit the law again. The opinions of the legal experts

[442] Osato, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria." 16.

were sought during the interview of this research. The respondents were asked whether the decision of the above case will create further confusion, all the respondents are unanimous also on this issue that it will. According to respondent one:[443]

> "*I think the Supreme Court should have exercised caution in reaching their decision in Dr. John, because if a doctor has a duty to obey the wishes of his patient, he could say remove this ventilation and other life support even if that could lead to his death he may not even say he wants to die, the implication remains the same. I will opine that the Supreme Court should take a look at the decision. This is a serious problem in the Nigerian medical practice; the patient does not have comprehensive information about the process of their treatment and is not well documented…"*

All the respondents were sceptical about the above decision of the Supreme Court because this is how the struggle for euthanasia started in the Netherland and Belgium and other developed countries. However, their fear is on active euthanasia, not passive where it happens in Nigeria as a matter of necessity, like the withdrawal and withholding of life support. The case shall be a basis for the recognition of some elements of euthanasia in the Nigerian medical practice. A step should be taken to settle the fear and the dilemma of the Nigerian doctors on some practices that may amount to a crime even though it is done out of necessity. Especially that in Nigeria the defense of necessity is not extended to grievous bodily injury or where it leads to death. Ambiguity and uncertainty of the law will not help medical practice. it was observed that the ambiguity in the law Netherland make doctors to fear reporting cases on euthanasia as unnatural death.[444] There is uncertainty whether one may or may not be prosecuted

[443] Interview with Respondent Number 1 in his law office on 12/3/2017
[444] Raphael Cohen-almagor, "Euthanasia in the Netherlands : The Legal Framework," *Michigan State University-Detroit College of Law Journal of International Law* 2, no. May (2014): 4.

3.2.5 International Human Rights Instruments on Right to Life.

International Human Rights Instruments do not support the practice of euthanasia. The instruments promote respect and preservation of life. Universal Declaration of Human Rights (UDHR) 1948,[445] specifically Article 3, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) 1966,[446] Article 2 of the European Convention on Human Rights (UCHR) 1953,[447] Article 4 of the American Convention on Human Right (ACHR) 1969[448] and Article 4 of the African Charter of Human and People's Right (ACHPR) 1981, all go to show the extent to which right to life is having universal standard and acceptance.

It is these international instruments that make the right to be entrenched and enshrined in all the Constitution in the world including Nigeria. However, for the purposes of understanding some cases that apply the instruments shall be considered. In an English case of *Airedale v. Bland*[449] European Court of Human Rights faced a similar challenge on whether Article 3 which is in *pari material* with the Sections 33 of the Constitutions of Nigeria shall allow termination of life on request. The Court stated that although euthanasia is not within the exceptions to protecting the right to life, the reason that there are circumstances where deprivation of life is allowed like death sentence does not mean right to life is an absolute right, thereby warranting terminating it as one wishes.

[445] UN General Assembly, *Universal Declaration of Human Rights,1984 217 A (III),* Available at*:* http://www.refworld.org/docid/3ae6b3712c.html.Accessed 2/3/ 2018.
[446] United Nation, International Covenant On Civil And Political Rights, 1966.
[447] Council of Europe, *European Convention on Human Rights*, 2010.
[448] UNTS, *American Convention on Human Right*. 1969
[449] Airedale NHS Trust v Bland, AC 789, 885, 789 (1993).

The case of *Dian Pretty*[450] is another good illustration on the stand of the European Court. In the case, she challenged the Director for Public Prosecution before a domestic court for not giving her assurance that her husband will not be prosecuted if he assists her to die.[451] The patient suffered from Motor Neuron Disease and as she entered the final stage, she wanted to avoid painful and undignified death. She was unsuccessful in her claim and she proceeded to the European Court of Human Rights on the ground that Article 2 of the European Convention on Human Rights guaranteed her right to control the time and manner of her death.[452] And that the article does not only aim at protecting people from any unlawful act of third parties, but it also includes freedom of choice. She also argued against the Suicide Act of 1961 that makes assisted suicide a crime in England and Wales, that it is against her right to choose to be assisted to die. And it is out of respect for the right to autonomy and self-determination that the offence of suicide was decriminalised while maintaining assisted suicide as a crime reflects the respect for the sanctity of sacred nature of human life. In rejecting the argument of Dian Pretty the court said:

> "It is not enough for Mrs. Pretty to show that the United Kingdom would not be acting inconsistently with the Convention if it were to permit assisted suicide; she must go further and establish that the United Kingdom is in breach of the Convention by failing to permit it or would be in breach of the Convention if it did not permit it. Such a contention is in my opinion unatenable."[453]

The Court, in this case, did not recognise the right to life to include right to die although the court referred the matter as something within the power of every country to make a law allowing euthanasia and assisted suicide. The court, however, opined that a

[450] Regina (Pretty) v. Director Public Prosecution (Secretary of state for the Home Department Intervening) UKHL 61, 800 (2001).800
[451] *The Consent to Medical Treatment and Palliative Care Act 1995 (SA) (Consent Act)*.1
[452] Dahl, *Giving Death a Helping Hand Physician-Assisted Suicide and Public Policy. An International Perspective*.149.
[453] Regina (Pretty) v. Director Public Prosecution (Secretary of state for the Home Department Intervening) UKHL 61, 800 (2001). 145.

patient shall not be subjected to a too burdensome medical treatment. This view of the court seemed to encourage supporters of euthanasia to pursue it rather more vigorously.

> "(1) Member states have an absolute and unqualified obligation not to inflict the proscribed treatment and also to take positive action to prevent the subjection of individuals to such treatment....(2) Suffering attributable to the progression of a disease may amount to such treatment if the state can prevent or ameliorate such suffering and does not do so....(3) In denying Mrs Pretty the opportunity to bring her suffering to an end the United Kingdom....will subject her to the proscribed treatment....(4) since....is open to the United Kingdom under the Convention to refrain from prohibiting assisted suicide, the Director of Public Prosecutions can give the undertaking sought without breaking the United Kingdom's obligations under the Convention. (5) If the Director may not give the undertaking, Section 2 of the 1961 Act is incompatible with the Convention."[454]

The stand of the EU Court that right to die has not been contemplated by Article 2 which is similar to Section 33 of the Nigerian Constitution, did not stop the proponents from carrying their argument further that euthanasia is legal even in Nigeria.[455] The argument is that the implication of Section 33, 34 and 35 suggesting that patient under life support are experiencing serious pain and the treatment they receive is in total violation of their right to dignity[456] and personal liberty, just as it was held by the EU Court above. If a patient request for an end to their life, there is nothing unconstitutional for allowing them.

One of the argument is that it is not correct to say that the decision to end one's life is a private affair and a matter of individual autonomy which nobody has right to question. The case of *Karen Ann Quinlan,*[457] she was a lady of 21 years who after

[454] Ibid Dian Pretty, 150.
[455] Aborisade Olasunkanmi, "Euthanasiaandthe Experiences of the Yoruba People of Nigeria," *Ethics and Medicine* 31, no. 1 (2015): 31.
[456] Plomer A., *The Law and Ethics of Medical Research: International Bioethics and Human Rights* (London: Cavendish publishing limited, 2005),91
[457] Quinlan (In the matter of Karen), N.J. 10 335 (1976),70.

taking the combination of Valium, Aspirin, and three tonics in a party fall into a coma and remained in a persistent vegetative state for ten years. Her parent saw the whole event as burdensome and therefore asked the hospital to withdraw the life support and allow her to die, but because she reached the age of 21 years, the hospital demanded a court order appointing the parent as next friend to Karen to enable them to do so. This is even though the parent signed a form exonerating the hospital from any liability because she did not satisfy the meaning of brain death under the New Jersey Law. Meanwhile, doctors certified that her situation is irreversible and the sum of 450 dollars is spent every day.

When Karen family's lawyer failed to secure the order on the ground of brain death which does not satisfy the requirement of the New Jersey law, her lawyer got his brief of argument amended to include the right to religion. It is the patient's religious belief that she should be allowed to die. The lawyer also compared the doctor's treatment with a prison guard punishing a prisoner. He further related the issue to privacy as in the case of *Roe v Wade*[458] on abortion, making it a right to make a personal decision. The human right provisions relied on are also contained in the Nigerian Constitution, for example Section 34, 37 and 38.

However, since no case comes before any of the Nigerian courts where a clear meaning will be given relating to the question of the right to withdraw lifesaving treatment that will lead to death. Nobody knows the future verdict of the court. However, any attempt to withdraw such supporting machine will amount to murder. Therefore, if there is no legal framework to deal with the situation doctors will remain in a dilemma, because doctors do it in Nigeria. According to respondent number seven:

[458] Roe v. Wade US 410 (1973).

> "…*It is right to withdraw especially where the relatives understand after it has been explained to them the implication and they agree, then we can withdraw and the withdrawal is ethical*."[459]

The reason of the respondent for withdrawing life support is the understanding of the family and their consent. However, in the *Karen case*, the hospital refused to withdraw life support because it will amount to murder yet it is done in Nigeria. The legal framework needs to be amended to regulate it. In the event, a case like this come before the court one may argue that there is the possibility for the court to be liberal in its interpretation of the Constitution. It may be in view of its decision with regard to the right of the Jehovah's Witness to refuse a blood transfusion, where it held that such right to autonomy and self-determination exist and must be respected even where the exercise of such right will lead to death.[460]

However, even in England when a case was brought before the House of Lord to allow the withdrawal and discontinuance of a lifesaving treatment of a patient in a permanent vegetative state. The House of Lord allowed the withdrawal but insisted that in any future occurrence an action should be brought before the court for consideration because euthanasia is illegal in the United Kingdom. In Nigeria nobody can say with certainty what will be the opinion of the Nigerian Court, knowing that the religious factors and strict adherence to the provision of the law will influence the direction of the judges. According to respondent number two:

> "*…in interpreting the law there are other things you take into consideration, the culture of the people, the values, our value system is different from another part of the world that is why here we don't encourage issues like gay marriage and other social issues. We shall*

[459] Interview with a Medical Doctor, Respondent Number 7 at his office in the Aminu Kano Teaching Hospital Kano 17/3/2017.
[460] Sofiia Kordonets, "Physician-Assisted Suicide (The Netherlands, the State of Oregon and the Practice of the European Court of Human Rights)," LL.M. Short Thesis, 2014.

> *not be in haste to borrow from another culture or legal system that has nothing to do with our culture or religious background*."[461]

The above respondent is of the opinion that whenever any court in Nigeria is faced with a similar case dealing with the withdrawal of life support leading to death the court will be guided by the religious and cultural factors of the Nigerian society unless the laws are amended. However, cases like *Airedale v. Bland*[462] where after a long legal battle the House of Lord said that withdrawal of life support to let a patient die will mount to a criminal offence. This decision will be a very good authority that any act of withdrawing life support because a patient is in irreversible pathology is a crime. And since Nigerian doctors are doing it due to necessity the only solution in Nigeria is to amend the laws to give doctors a way out.

Furthermore, US Supreme Court stated the correct position of the US Constitution, when it was argued that right to die exists for the terminally ill patient and that the law making it unlawful is in violation of the Due Process and Equal Protection Clause under the 14th Amendment.[463] The US Supreme Court rejected this argument described the American legal system as one that has been in practice for over 700 years. The Due Process and Equal Protection are deeply rooted in the American history and tradition, and the right to euthanasia or assisted suicide has never been contemplated.[464] If the American system which is a symbol of human right has not accepted the right to die as an acceptably protected right, it will only be a matter of necessity in Nigeria.[465] However, one may argue that the Supreme Court decision in *MDPDT v. Okonkwo* that allowed refusal of life-saving treatment as the human right to also be extended to

[461] Interview with a Legal Practitioner, Respondent Number 2 at his Law Office 20/4/2017.
[462] Airedale NHS Trust v Bland, AC 789, 885, 789 (1993).
[463] Vacco v. Quill, US 521 793 (1997), Washignton V. Glucksberg, 138 838 (1997).
[464] Barryhe Rosenfeld, *Assisted Suicide*, and *Right to Die*, 1st ed. (London: American Psychological Association, 2002),37.
[465] Osato, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria." 56.

allowing the patient to ask for the withdrawal of some burdensome medical treatment that may lead to death. This where the case of the patient becomes hopeless and terminal.

Nigerian Constitution ensures and protects right to life; therefore, the Constitution cannot be assumed to have legalised euthanasia in Nigeria. This position is confirmed by the Penal and Criminal Code. The next discussion is on the consideration of the Nigerian criminal justice system prohibiting the practice of euthanasia.

3.3 Prohibition of Euthanasia by the Nigerian Criminal Justice System

Euthanasia is illegal under the English common law,[466] although the law recognises right to autonomy and self-determination, but not to the extent of allowing anybody to have control over the life of another or himself. Therefore, any act of administering lethal drugs capable of shortening life is an illegal act in the UK.[467] Nigeria being a child of the Common Law, the position remains the same, euthanasia is illegal, all the argument of the proponent that euthanasia is legal is mere speculation until a case comes before the court shall we know with certainty whether it will be allowed.

Nigeria is a multicultural society and therefore, it will be difficult to have a single criminal justice system that can apply and satisfy the requirement of all the societies.[468] Since the coming of the colonial masters, English Criminal Justice System was introduced and made applicable to the entire country without due regard to the nature of the Nigerian societal differences of religion, culture, tradition and social wellbeing. It was later realised that the difference is causing a problem to the application of the

[466] Bamgbose, "Euthanasia: Another Face of Murder."13.
[467] R. v. Cox, BMLR 12 (1992).38
[468] Noel Otu, "Colonialism and the Criminal Justice System in Nigeria Colonialism and the Criminal Justice System In Nigeria," *International Journal* 4036, no. February 2012 (2011): 37,

English Criminal Code, and the two laws were separated making Criminal Code applicable in the South and Penal Code in Northern Nigeria.[469] Penal Code was introduced to Northern Nigeria with special consideration to the religious belief of the people while the Criminal Code was retained for Southern Nigeria. The Criminal Code originated from the English Common Law, and because of the early acceptance of white men in the South and the adoption of their lifestyle Criminal Code became the most suitable law there. However, although different states in Nigeria have their Criminal or Penal Code with crime and punishment that suit the life of the people of that society, this research limit its discussion to just the Penal and Criminal Code of Nigeria.

It is the law that nobody will be punished for an offence unless that offence is defined, and the penalty is prescribed in a written law. The written law means the law made by either National or State House of Assembly.[470] The following will be the discussion of the Penal system prohibiting the act of euthanasia.

3.3.1 Position of the Penal Code of the Northern Nigerian

There is no doubt that suicide is not an offence under the Nigerian legal system.[471] However, aiding and abating suicide is a punishable offence in the country.[472] It is a common knowledge that most of the people committing suicide are suffering from depression and other psychiatric problem. Sequel to this, it is presumed that where a doctor on the voluntary request of a terminally ill patient prescribes lethal drugs to hasten death he shall be guilty of aiding and abating the offence of suicide. No case

[469] Ephiphany Azinge, "Proposed Unification of Criminal Laws of Nigeria" 2006),12.
[470] Section 36 (12) Constitution of Nigeria 1999
[471] Jaana Porra, *Colonial Systems*, *Information Systems Research*, vol. 10, (1999):38,
[472] Section 36 *Criminal Code* (Nigeria, 2004).

has been decided in Nigeria on this issue though, however, it is this researcher's opinion that it will amount to abating suicide if the sole intention is to cause the death of that patient. The motive and compassion of the doctor is not an excuse.[473] The criminal system and medical code of ethics will not accept any attempt to terminate the life of any patient.

In Nigeria, a crime includes an act or omission,[474] and it is not the concern of the law who commits the act or the omission, whether doctor or an interloper. Any act or omission that has the result of causing death will be a crime. However, what requires interpretation is whether withdrawal of life support or treatment of a terminally ill patient will amount to an omission to constitute criminal responsibility within the ambit of the law. However, relying on the decision of the House of Lords in *Airedale v. Bland* such act of withdrawing life support amounts to a crime. Although it can be argued that if the treatment has not started but withheld it may not bring criminal responsibility. For the purposes of understanding the provision of the Penal Code is hereunder reproduced:

S. 220 Penal Code: Whoever causes death-

> "(a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or
>
> (b) by doing an act with knowledge that he is likely by such act to cause death; or
>
> (c) by doing a rash or negligent act, commits the offence of culpable homicide."

[473] Mary. Warnock and Elisabeth. Macdonald, *Easeful Death Is There a Case for Assisted Dying?* (New York: Oxford Univeristy Press, 2008), 57.

[474] In an enactment, the following expression have the meaning hereby assigned to them respectively, that is to say-An act includes or omission, and reference to the doing of an act shall be constituted accordingly. Section 18 (1) Interpretation Act, Cap J1 Laws of the Federations of Nigeria 2004

With a careful perusal of the above provisions of the Penal Code, an offence of homicide can be committed only by an overt act, causing death or grievous body injury, so long as the doer of the act has knowledge that his action will cause death. It will go without saying that paragraph (b) above make a crime not only euthanasia, even the so-called *Doctrine of Double Effect*. If pain-relieving drugs are used with death hastening effect, even though death is not the intention of the doctor, but he has knowledge that the unintended effect of his act will be dead, it will amount to murder, or even removing a patient from life support leading to his death.

The omission is not included as a means of committing an act of murder by the above provision. One would have thought that omitting to save the life of a patient by a doctor or by withdrawing life support which many consider as omission, cannot constitute the offence of homicide under the Penal Code. However, generally, whenever an act is said to be a crime the likely interpretation is that the act will include omission.[475] For example, refusing medical treatment where administering same is an exercise in futility, is an omission to act which may cause death, although one may argue that patient here will only die because of the natural consequences of his illness.[476]

Furthermore, under the Penal Code, a provision is inserted to show that whenever an act is said to be an offence whatever effect that act may cause if omission to act will cause the same effect it will be deemed to constitute the same offence. Section 26 provides:

> "Wherever the causing of an effect or an attempt to cause that effect by an act or by omission is an offence it is to be understood that the

[475] Ibid, Section 18 (1) Interpretation Act, Cap J1 Laws of the Federations of Nigeria 2004
[476] Ann and Selvalingam, "Physician-Assisted Death in England and Wales," 2014.

> causing of the effect or the attempt to cause that effect partly by an act or partly by an omission is the same offence"[477]

Therefore, for those who argue that an act of withdrawing or withholding treatment is an act or omission, it makes no difference so long as the result is death and it produces the same effect, it will be a crime. Any doctor that withdraws life support of his patient has committed a crime according to Section 220 and 26 of the Penal Code law.

However, where the act or the omission is done with the consent of the patient, the doctor will not be guilty unless it leads to death. It is a principle under the English Common Law that a person shall not complain about any wrong which he consented. This principle is also applicable to the criminal justice system under the Penal Code. Section 53 (1) and (2) provides:

> "(1) No act is an offence by reason of the injury it has caused to the person or property of a person who, being above the age of eighteen years, has voluntarily and with understanding given his consent express or implied to done by that act.
>
> (2) This section shall not apply to acts which are likely to cause death or grievous hurt, nor to acts which constitute offences independently of any injury which they are capable of causing to the person who has given his consent or to his property."

Although in Subsection 1 consent is recognised as a defense to the injury done to person or property, however under Subsection 2 the consent shall not apply where what has been done is likely to cause the death of the patient. This, therefore, closes the argument that where a patient consent to termination of his life a doctor shall not be responsible. The law went further to say that it does not matter whether the victim reaches the age of 18 years or above, sound or unsound mind; the doctor shall not escape criminal responsibility. This position of the law applies to withdrawal of life

[477] Section 26 *Penal Code, Cap. P3 Laws of the Federation of Nigeria, 2004*..

support where a patient or his family request or allow the withdrawal of life support to terminate the life of a patient.

However, there is the need to make clarification where an act of a doctor happens to be a mistake that leads to the death of his patient. In cases like that the doctor can only be charged with gross negligence which may only amount to manslaughter not an offence of murder punishable with death under section 221 of the Penal Code. The act leading to death may look like euthanasia or assisted suicide. In *R v. Adomako,*[478] the accused in this case is an Anesthetist who continued his work not knowing the oxygen has been removed from his patient leading to death. He could not offer an acceptable explanation of what happened. He was charged with gross medical negligence and convicted of manslaughter. It is the view of this researcher that had he deliberately withdrawn the life support leading to the death of his patient his conduct will amount to euthanasia. It will not be any excuse whether he withdraw on the request of the patient or not. However, the court, in this case, was not to determine whether his conduct amounts to euthanasia because it was not a case of extreme pain or terminal illness.[479]

Furthermore, giving a patient, a lethal injection or poisonous drugs can also cause grievous body injury which will also amount to an offence even with the consent of the patient. Section 53 of the Penal Code includes consent to an act that causes grievous bodily injury. It is the view of this researcher that although it is not an injury on the surface of the body it is an injury in the inside because it affects the patient respiratory system thereby causing breathing difficulties leading to death. Therefore, it will

[478] R. v. Adomako AC (1995) 175.
[479] Adefarasin, "Euthanasia: An Act of Mercy or Murder?" 25.

amount to an offence to give any substance or withdraw life support capable of terminating life despite the consent of the patient or his family.

The provision of the criminal code is more encompassing; the following is going to be the discussion of the relevant provisions of Criminal Code prohibiting euthanasia in a more categorical sense.

3.3.2 Position of the Criminal Code of Southern Nigerian

As earlier on explained, Criminal Code has its origin from the English common law and it was made applicable in Southern Nigeria because of their earlier experience with white men during colonisation. The law is more detail about the prohibition of euthanasia because the struggle for the right to autonomy and self-determination which lead to the struggle for the right to die has been well entrenched in that part of the world. Provisions of the Criminal Code about the act of killing directly or indirectly is in the opinion of this researcher refers to euthanasia. It is not correct to say the law prohibiting euthanasia in Nigeria is not clear.[480] However, there is the need to make some necessary amendment to the existing laws. The following is the detail discussion of the provision of Criminal Code.

Section 308 of the Criminal Code[481] provides:

> "Except as hereinafter set forth any person who causes the death of another, directly or indirectly, by means of whatever, is deemed to have killed that Person…"

Section 311 provides:

> "A person who does any act or makes any omission which hastens the death of another person who, when the act is done or the omission

[480] Oluseun Abinbola, "Law and Medicine: Ameeting Point," *Research Journal of Health Sciences*, (2014):15.
[481] Cap C38 Laws of the Federation of Nigeria 2004

> is made is labouring under some disorder or disease arising from another cause is deemed to have killed that other person."

A more relevant provision of the Criminal Code Section 316 says:

> "Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say…."
>
> 5) death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid;
>
> 6) if death is caused by wilfully stopping the breath of any person for either of such purpose is guilty of murder, is immaterial that the offender did not intend to cause death or did not know that death was likely to result."

As stated earlier the provision of the Criminal Code is wide and more encompassing. The provision thereof, the use of the phrase directly or indirectly, which include all acts or omission on the part of any doctor that hasten death. It could be through whatever means, be it through an overdose of morphine, lethal injection or withdrawal of life support. More specific provision is Section 311 which refers to where a patient is labouring on any kind of disorder or disease. It is on this that the researcher reached the conclusion that where an anaesthetic removed the oxygen of his patient leading to his death he should have been charged with murders, not gross negligence.[482] This provision is directly referring to euthanasia both passive and active. Most particularly Section 316 which directly relate to the withdrawal of ventilator that keeps a patient breathing. In the *Tony Bland's case*,[483] where the court was asked to allow withdrawal of life support of the patient as an act that will lead to death, the court said the act will amount to murder by necessary implication. There is no case that comes before any Nigerian court on this issue, however, in the above case; the court drew a difference between an act of actively terminating the life of the patient and withdrawal of life

[482] Ibid R. v. Adomako AC (1995) 175
[483] Airedale NHS Trust V. Bland, 789 (1993)235.

support that is passive and active euthanasia. Both actions amount to the offence of murder is left for the court to consider reason in passing sentence.

Therefore, withdrawal of such ventilator is termed as passive euthanasia and it is crystal clear to be a crime. However, a number of decisions outside Nigeria acknowledged this situation not to be a crime so long as the withdrawal is done with the consent of the patient or it is done in his best interest.[484] In Nigeria, provisions in the Criminal Code are very direct to the prohibition of euthanasia. Consent or even compassion towards the victim will never be an excuse to euthanasia perpetrator. Section 299 of the Criminal Code provides:

> "Consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused"

It will never be an excuse that the act that leads to death was done with the consent of the deceased or his family. In the decided case of *State v. Okezie*,[485] a native doctor who specialises in providing charm against a gun invited the accused to test the charm on the doctor which the accused did and he died. The accused was convicted of murder despite that the act was carried out with the voluntary consent of the victim. The argument that if a patient or his family consent to terminating life whether or not through withdrawal of life support is a crime in Nigeria is settled.

In addition to this, Section 326 of the Criminal Code provides again:

> "any person who procures another to kill himself; or
> counsels another to kill himself and thereby induces him to do so; or
> aids another in killing himself; is guilty of a felony and is liable to imprisonment for life."

[484] Herczegfalvy V. Austria, EHRR,15 (1993) 437.
[485] State v. Okezie, 2 ECSLR (1974).419

Although most of those who accept the idea of euthanasia insist that the practice must be voluntary. Research[486] has shown that many patients were induced or pushed to succumb to the pressure. Sometimes the act is suggested to them by doctors or other relatives which is one of the fears of the opponent.[487] Section 326 makes it an offence to even suggest or counsel a patient towards terminating his life. Time shall come when euthanasia will be taken as a duty to die if one is suffering from terminal illness or he becomes a burden to the society.[488] However, the fact that certain situations are considered to be necessary cause doctors to withdraw, there is the need to look at these laws again with a view to finding a solution to the situation.

The pertinent question one will be forced to ask is that sometimes a patient can be in such a condition that his not dead, but he is better off dead, especially if the quality of life is so bad.[489] This makes a treatment to be abandoned, although it is believed that the quality of life is bad. Therefore, is whether the patient is worthy of the treatment rather than whether the treatment will improve or extend his life. In such situation, treatment is withdrawn, and it will hasten death. By the provision of section 311 of the Criminal Code, any doctor who does such an act will be guilty of a crime.[490]

The provision of the Criminal Code will be used to hold any doctor responsible for the death of his patient if he withdraws life support and causes death. Therefore, if doctors in Nigeria engage in this practice for whatever reason their conduct is a crime.

[486] Samgson, "Euthanasia: Socio-Medical and Legal Perspective." 22
[487] Raphael Cohen-almagor, "Should Doctors Suggest Euthanasia to Their Patients? Reflections on Dutch Perspectives," *Theoretical Medicine* 23, (2002): 287.
[488] Abayomi Samgson, "Euthanasia: Socio-Medical and Legal Perspective," *International Journal of Hmanities and Social Science* 4, no. 10 (2014): 2.
[489] Ralf Stutzki et al., "Attitudes towards Hastened Death in ALS: A Prospective Study of Patients and Family Caregivers,"*Amyotrophic Lateral Sclerosis & Frontotemporal Degeneration* 15 (2014): 68.
[490] Ansari, Sambo, and Abdulkadir, "The Right to Die Via Euthanasia: An Expository Study of the of the Sharia and Laws in Selected Jurisdictions." *Advances in Natural and Applied Sciences*, 6 (2012): 23.

However, in some jurisdictions, such situation is not considered as murder.[491] Death considered being the natural consequences of his illness because the patient would have died even without the withdrawal of the supporting machine or treatment.

The situation will be complexed where the patient claims that is his human right to refuse and withdraw from any treatment, even if that will lead to his death. In this situation a question of priority will arise, is it the right of the patient, professional ethics or criminal law? It is the researcher's opinion that human right of the patient shall be considered first. The Nigerian Supreme Court opined that a patient has right to refuse medical treatment even if that will lead to his death.[492] However, the situation is confusing. A patient has a right to refuse treatment that may lead to his death, but he cannot ask for the withdrawal of treatment that will also lead to death. A case must, however, be made for the amendment of the law to clear the doubt and the dilemma of Nigerian doctors in this regard.

By way of clarification, Malaysia is a good point of reference just like the United Kingdom and Nigeria, there is no law with the direct prohibition of euthanasia but prohibition for murder generally. Article 5 of the Malaysian Federal Constitution guarantees the right to life and nobody's life shall be deprived save in accordance with the law[493] and section 299 of the Malaysian Penal Code makes it an offence to terminate life.

> "Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

[491] Airedale NHS Trust V. Bland, 789 (1993)234.
[492] Faye J. Girsh, "Voluntary Euthanasia Should Be Legalised," in Euthanasia Opposing View Point, ed. David M. Haugen Devid L. Bender, Bruno Leon, Bonnie Sxumski (California: Greenhaven Press Inc., 2000), 69.
[493] Masum, "An Overview of the Right To Life Under the Malaysian." 12.

It is only by the necessary interpretation that one will arrive at the conclusion that euthanasia is murder and punishable under the Malaysian law.[494] Any conduct that involves hastening of death intentionally or by doing any act with the knowledge that the likely consequences of such action will cause death is a crime. However, in Malaysia, it was argued that active voluntary euthanasia will not amount to murder under section 299 of the Penal Code of Malaysia.[495] Even though is a crime the offence will be culpable homicide with punishment that will not exceed twenty years imprisonment.[496] Therefore, where a doctor out of compassion or on the request of his patient terminates life, he will be guilty of homicide the punishment of which will not exceed twenty years in Malaysia. However, if one carefully studies the provision of Section 300 of the Malaysian Penal Code, a doctor can also be charged and found guilty of murder. Section 300 provides:

> "except in the case hereinafter excepted, culpable homicides is murder if the act by which the death is caused is done with the intention of causing death, or ……Thirdly, if it is done with the intention of causing bodily injury intended to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death…"

Any act of terminating life by a doctor with intention amount to murder. Again, using any lethal injection that can cause bodily injury thereby leading to death can be termed as murder[497]. However, unlike the law in Nigeria consent of a person above the age of 18 years in case of murder has the effect of reducing the offence from murder to

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[494] Fadhlina Alias, "The Legality of Euthanasia from the Malaysian and Islamic Perspectives : An Overview."

[495] Talib, *Euthanasia-A Malaysian Perspective*.67

[496]Section 304 Malaysian Penal Code. "Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death: or with imprisonment for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that is likely to cause death, but without any intention to cause death or to cause bodily injury as is likely to cause death."

[497] Puteri Nemie Kassim, Fadhlina Alias, and Ramizah Wan Muhammad, "The Growth of Patient Autonomy in Modern Medical Practice and the Defined Limitations under the Shari'ah," IIUM Law Journal 22 (2014): 213.

culpable homicide under section 299 of the Malaysian Penal Code. This position is found under the exceptions to section 300 of the Penal Code thus:

> "Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death with his own consent"

By necessary implication of the above provision where a patient in Malaysia consent to termination of his life by a doctor, the doctor will not be punished for murder but culpable homicide. Here consent is recognised to have some legal implication on what the law has made unlawful or a crime. This will be a major difference between the Nigerian law and Malaysia on the prohibition of euthanasia.

3.4 Difference between Penal Code and Criminal Code of Nigeria

A brief explanation of the application of these laws is provided in the introduction of this chapter. In spite of the differences in the area of jurisdiction, the two laws have a lot in common. They are both similar sometimes in terms of the definition of offences, the ingredients of those of offence and the punishment. Perhaps one of the differences is the detail of one law than the other in terms of some specific offences. In this case the offence of murder where the prohibition of euthanasia can be inferred. The Criminal Code is more details. For example, Section 3011, 316 and 308 from the Criminal Code have a more categorical definition of murder and the instances that cause death with euthanasia implication.

However, Penal Code is not so categorical in the definition of murder to clearly bring about the prohibition of euthanasia. Section 221 and 222 only provide for murder being any act done with the knowledge that is likely to cause death. However, both laws make any act capable of causing death prohibited and punishable under the law, including euthanasia as in this research.

The Penal Code law leaves much to be desired compared to the provision of Criminal Code regarding euthanasia because penal code does not anticipate euthanasia as an acceptable phenomenon may be because the law is not a clear copy of the law of England like the Criminal Code.

Finally, one major difference between both laws is in respect of the defense of consent to criminal responsibility. In the Penal Code under Section 53 consent can negate criminal responsibility however not where it causes the death of the person consenting. The same thing under the Criminal Code Section 299 consent is regarded as a defense to injuries to person and property unless where it causes death. Mainly the Penal Code is more detail because it excludes underage and people with unsound mind.[498]

3.5 Other Legal Rules and Medical Code of Conduct/Ethics of Nigeria

Having discussed the constitutional provision on human right and other international human rights instruments with similarity thereto, some cases decided in Europe and America revealed the illegality of the practice of euthanasia. Complimenting it with the provision of the Criminal and Penal Code it is clear euthanasia is illegal in Nigeria. The following are laws complimenting the prohibition of euthanasia from medical perspectives.

3.5.1 Code of Conduct of Medical and Dental Practitioners

Code of Conduct of Medical and Dental Practitioners 2004 is the most direct law on saving life and prohibiting Euthanasia.[499] Any doctor who terminates life will be guilty of breaching the Code of Conduct. It is not allowed to terminate patient's life by

[498] Azinge, "Propose Unificatin of Criminal Laws of Nigeria."7
[499] Rules 68 Code Of Medical Ethics, "Practitioners, Rules Of Professional Conduct For Medical & Dental," 2004.

prescribing lethal drugs notwithstanding the patient's request or consent or even is in the patient's best interest. The punishment under the Code is to suspend or withdraw the practice license, at the same time the doctor may be found guilty of murder and appropriately punished under the relevant provision of the criminal or penal code.[500]

However, every country has its own code of medical ethics and sometimes some codes are designed by some associations to regulate the practice of its members. These codes are moral rules referred to as rules of professional conduct. The first and the beginning of the rules started from the Hippocrates, a doctor considered to be the father of modern medicine.[501] His statement is widely known as the Hippocratic Oath,[502] which today becomes the guiding principle of all medical practitioners; even the World Medical Association (WMA) built its Code of Ethics from the Hippocratic Oath. The Oath has now become the oath administered to newly admitted medical practitioners before they start the medical practice, they swear to uphold the professional ethical standard. Let me quote the portion relevant to this research even though countries adopt it with necessary modification:

> "I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan; and similarly, I will not give a woman a pessary to cause an abortion."

This portion directly relates to the question of euthanasia and assisted suicide. The World Medical Association (WMA) and some other International Association have made some changes to the original oath, but without losing the message of prohibiting euthanasia and assisted death. History has shown that before the coming of this oath medical doctors served dual functions, they are both healers and killers, where they

[500] Abimbola O,. "Law and Medicine: A Meeting Point," *Research. Journal of Health Science* 2 (2014):192.
[501] Koch, "The Hippocratic Thorn in Bioethics' Hide: Cults, Sects, and Strangeness."16
[502] Edelstein, Hippocratic Oath. 12

assisted the terminally ill patient or patient with a severe health problem to end their lives, but with the coming of the Hippocrates, modern medicine was introduced. A lot of diseases found their cure and he trained his disciples not to assist or harm their patient, rather they shall strive to assist their patient to regain their health.[503] The changes refer to in the oath above is contained in the Geneva Declaration.[504] In the UK for example, the General Medical Council provided guidelines in form of duties of doctors and good medical practice. and in all the guidelines termination of life is made to be an offence and unethical.

Medical ethics relate to the questions of moral principles involving values and judgments in the medical practice. Is a kind of guidelines on ethical principles and policies, breach of these ethics attracts some disciplinary actions on the erring members.[505] For this purpose Medical and Dental Practitioners Act requires the establishment of Medical and Dental Council and saddled it with the responsibilities of creating and issuing the code:

> "Reviewing and preparing from time to time a statement as to the code of conduct which the Council consider desirable for the practice of the professions in Nigeria"

Therefore, all doctors in Nigeria are required to comply with the provision of the Code to protect their reputation and continue to maintain public confidence.[506] It is sequel to this that euthanasia has to be categorically prohibited by the Code as it goes against the essence of medical practice and allowing it will tarnish and erode public confidence in medical practitioners. After all, the role of doctors is to heal not to harm or end life,

[503] Lenora H. Lee, "A Good Death: The Politics of Physician Assisted Suicide in Hawai'i," PhD Thesis University of Hawai'i, 2009)27.
[504] Ummel M., "The Oath of Geneva," Gesnerus 49 Pt 3-4 (1991): 517.
[505] Hsieh, "Brain Death Worldwide: Accepted Fact but No Global Consensus in Diagnostic Criteria"3
[506]Abegunde B., "Legal Implications of Ethical Breaches in Medical Practice : Nigeria a Case Study." *Asian Journal of humanities and social sciences*,1 no.3 (2013):70.

and where their role seems to include the ending of life patient will be wary to present themselves to health practitioners for the purposes of treatment. Euthanasia will be made to be part of the necessary treatment for terminal illness.[507] The Code takes a leave from the provisions of Hippocratic Oath in prohibiting euthanasia, though it passes through series of review, for example, it was reviewed in 1995 and 2004 which is the current Code in operation. The Code contained about 8 parts, regulating professional conduct, professional brotherhood and medical negligence, malpractice like deceit, extortion, improper relationships with colleague or patient. The last part deals with euthanasia, it provides:

> "A practitioner shall be adjudged to be in breach of the ethical code of practice if found to have encouraged or participated in any of the following acts: (a) Termination of a patient life by the administration of drugs, even at the patient's explicit request. (b) Prescribing or supplying drugs with the explicit intention of enabling the patient to end his or her life. (c) Termination of a patient's life through the administration of drugs with or without the patient's explicit request thinking same to be in the interest of the patient."[508]

However, it is a general duty of doctors to preserve human life, and if to preserve the life of their patients is a duty, this duty will raise a lot of debate, especially with regard to whether doctors shall preserve life by all means or to what extent shall the life be preserved? What of where it is the express wish of the patient not to have his life saved or prolong since the code requires all doctors to respect the wishes of their patients? In essence, does, the Oath or Code mean treatment must continue even where it only prolongs pain and suffering without cure, or whether the doctors shall respect the express request of his patient to discontinue or to withdraw?

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[507] Raphael Cohen-almagor, "Should Doctors Suggest Euthanasia to Their Patients? Reflections on Dutch Perspectives," *Theoretical Medicine* 23, (2002): 287.
[508] Rules 68, *Rules of Professional Conduct for Medical & Dental Pratitioners,*2004.

The question on refusing treatment is answered by the Nigeria Supreme Court in the case of *MDPDT v. Okonkwo*[509] where the court categorically stated that the right of a patient to refuse or reject medical treatment even if that will lead to death is recognised. Thereby allowing the right of the patient to overshadow the provision of the Code of Medical Ethics insisting that doctors shall preserve the life of their patients. Although it is the view of this researcher that not only shall the wishes of the patient be ignored to save his life, but that state interest to protect and preserve life shall out weight the wishes of the patient to end his life. This is without being unmindful of the act that sometimes it is a necessity that pushes the doctors to withdraw the support. In most of the situations, doctors do not consider withdrawal of life support leading to death amount to euthanasia.[510]

Apart from the Code of Professional Conduct 1995, there is no law that categorically mentioned the word euthanasia or assisted suicide in all the Nigerian laws. As pointed out earlier inferences can be made from prohibition or permission. This researcher remembers and makes reference to Eraze's argument[511] who argued that with a community reading of the provision of Section 33, 34 and 35 euthanasia is constitutionally permitted. However, the scholar did not realise that if constitutional provision makes a general statement which appears to be vague, the criminal system through Penal and Criminal Code makes specific provision prohibiting the act. And the law is that where there is a general and specific statement of the law, the specific shall take the position. Although he also argues that euthanasia is not specifically

[509] Medical and Dental Practitioners Disciplinary Tribunal v. John Emewulu Nicholars Okonko, LPPELR, 213 (2001) 1999.
[510] Raphael Cohen-almagor, "Why the Netherlands?," Journal of Law, Medicine & Ethics, 30 (2002): 95.
[511] Eraze, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria." 12

prohibited in all the laws, it can be said that the fact that a particular word constituting an offence has not been mentioned will not suffice to say that the offence does not exist. It is the element of the offence that is required to be proved not the words used in describing the offence.

Furthermore, one will also argue that since medical ethics in Nigeria is not a creation of statute directly, it will be difficult to enforce it. However, to ensure compliance with these ethical principles Medical and Dental Practitioners Disciplinary Tribunal is established to try erring members of the professional for any violation or ethical misconduct. This will be done after the Investigation Panel has been formed and submitted their result of the investigation.[512] The Tribunal was given the status of High Court with its decision appeals to Court of Appeal. Although some wrongs of the medical practitioners may amount to a crime, not all misconduct are crimes, but any act of hastening death will be murder punishable with death and it constitutes both a crime and professional misconduct unless there is an amendment of the law.

However, this researcher doubts if any legislature will bring this issue to the floor of the House. However, it is the view of this researcher that the law should be looked at again. Particularly in respect of passive euthanasia or withdrawal of life support because it is done as a matter of necessity by the doctors. Therefore, the law truly needs some amendments to alleviate the fear and the dilemma of the doctors.

From the interview conducted in the process of this research, both lawyers and doctors bring religion first when the question of hastening death or euthanasia is raised.

[512] Medical and Dental Practitioners Act Cap M8 Laws of the Federation of Nigeria 2004

Respondent number two even said this research will not be completed without looking at the religious aspect of the issue. According to respondent two:

> "*This topic as far as I am a concern really no matter how you look at it, you cannot be just at it from the legal point of view without looking at its religious point of view. You cannot divorce them because any religion you look at knows that there is somebody who created that life and that being says that life has value and it cannot be terminated in any circumstance. If your thesis relates to the legal point of view, I want to add that you cannot deal with it without looking at the religious aspect of it*."[513]

Therefore, anybody proffering any suggestion on the question of euthanasia must look at the religious aspect of it being a cornerstone of every issue affecting the society. Many patients will have their life terminated especially if they have some wealth to leave behind, it may even be by their families in connivance with the doctors. However, it is this research's view that despite these entire predicaments the law has to be amended in view of the dilemma of medical doctors and medical practice. The reason is that is not in all situation that the question of culture and religion will be used to stop a development of the legal system. Sometimes it is even the religion that will accept and push for the development.

Necessity plays a pivotal role in changing the system. Indian Supreme Court allowed passive euthanasia because of necessity. However, the court put stringent conditions and urge the Indian Parliament to come up with a framework to tackle the question of euthanasia.[514] This is the reason that once a patient asks for the withdrawal of life support that may lead to death, the hospital management will ask for a court order because the court seems to be the best authority that will provide immunity from

[513] Interview with Respondent number 2 a Legal Practitioner at his Office on the 17/3/2017
[514] Kanchan, Atreya, and Krishan, "Aruna Shanbaug: Is Her Demise the End of the Road for Legislation on Euthanasia in India?"14

prosecution. However, if the situation requires urgent decision doctors shall be allowed to judge from the ethical moral judgment and do the right thing.

It is hoped that a case will be brought someday in Nigeria before the court, considering the social, religious and cultural factors involved at the end of life issues. Even the Dr. John's case was before the court as a case dealing with the right to refuse medical treatment not a case relating to termination of life, even though some scholars argued that the decision clearly permitted passive euthanasia.[515]

3.5.2 Position of Islamic law on Euthanasia in Nigeria

It is important at this juncture to look at the position of Islamic Law on the concept of Euthanasia for being part of the Nigerian Legal system. It is a law practice and applied to the Muslims who dominated Northern Nigeria. It must first of all be noted that under Islamic law euthanasia is illegal.[516] In Islam, all actions are guided by the two sources of Sharia, Quran and Hadith of the Holy Prophet (SAW). While all other sources like *Ijtihad* (analogical deduction) derive their authorities from both the Quran and the Hadith.[517] In the Qur'an, Allah has prohibited any act of taking life without any legal justification. Nobody has the right to take his life or of another,[518] since he is not the giver of such life and in no way, shall excruciating pain or illness be a reason to hasten or end life.[519]

[515] Osato, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria."13
[516] Fadhlina Alias, "The Legality of Euthanasia from the Malaysian and Islamic Perspectives : An Overview." 164.
[517] Islamic Organization of Medical Sciences, "The Islamic Code of Medical Ethics Endorsed by the First International Conference on Islamic Medicine" (Kuwait, 1981).
[518] Ramizah Wan Muhammad Fadhlina Alias and Nasimah binti Hussin Nasimah, Puteri Nemie Jahn Kassim, "The Doctrine of Sanctity of Life from the Islamic Perspectives," *Journal of the International Instiuttue of Islamic Thought and Civilisation* 21, no. 1 (2016): 23.
[519] Mawlani Sher Ali, *The Holy Quran, Arabic Text and English Translation*.

The saying of Allah that whoever kills a soul without legal justification is though he kills the entire mankind and saving the life of a single soul is like saving the entire humanity is illustrative here. There are several Quranic verses prohibiting any act of taking life without due process of the law. "Do not take life, which Allah made sacred, other than in the course of justice".[520] And in another verse, it says: "If anyone kills a person unless it is for murder or spreading mischief in the land it would be as if he killed the whole people…".[521] The two verses are clear evidence of the prohibition of terminating life. Death shall be allowed to take a natural course, everybody has a destined time for his death. It is not for anybody to hasten it for whatever reason: "…When their time comes they cannot delay it for a single hour nor can they bring it forward by a single hour".[522] In another way of prohibiting euthanasia, it was narrated by Abu Huraira that the Holy Prophet[523] says:

> "Whoever purposely throws himself from a mountain and kills himself, will be in the (Hell) Fire falling down into it and abiding therein perpetually forever; and whoever drinks poison and kills himself with it, he will be carrying his poison in his hand and drinking it in the (Hell) Fire wherein he will abide eternally forever; and whoever kills himself with an iron weapon, will be carrying that weapon in his hand and stabbing his abdomen with it in the (Hell) Fire wherein he will abide eternally forever."

Therefore, it is not for anybody to kill himself because he has been inflicted with a calamity or ill health. Whenever a Muslim falls sick it is considered as a test, trial and atonement for his sin. Several authorities show that Allah inflicts injury, pain, loss of loved ones, all in order to test people's belief and to see the most patient among them.[524] The above Hadith of the Prophet (PBUH) is a clear testimony to this effect.

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[520] Quran 25: 78
[521] Quran 5:33
[522] Quran 63:11
[523] *Sahih Al-Bukhari – Book 71 Hadith 670*.
[524] Quran 2:153, Mawlani Sher Ali, *The Holy Quran, Arabic Text and English Translation*.

Respondents number five in this research reaffirmed the above position regarding the prohibition of euthanasia in Islam:

> "*…Islam absolutely prohibits the taking of anybody's life simply because he is in extreme suffering and pain. They gave an example of a cancer patient who is suffering as a result of the disease and in some instances the pain renders him unconscious as though he will not survive, they said, in this case, it is unlawful for a doctor to give him drugs or any substance for the purposes of ending his life or assist him in ending his life because of that ill health, suffering and the pain. (This is popularly known as none voluntary active euthanasia). Because his life is not in the hand of the doctors and in many occasions these kinds of patients live a long time or even get cured of their illness, so the jurists are unanimous here that it is not permitted to hasten the patient's life*."[525]

According to the view of this respondent, he supports the provision of the Quran and Hadith which show how needful it is for doctors to strive to save a life. This is because Islam promotes the protection of sanctity and sacred nature of life. Preservation of life forms part of what scholars call Maqasid al-Shari'a, which includes protection of human freedom or faith, maintenance of intellect, preservation of honour and integrity and protection of property.

On the other hand, passive euthanasia is acceptable under Islamic law. Doctors are expected to preserve life; however, this is not to the extent where the medical treatment becomes futile. Doctors should know their limit in discharging their duties, they are not to prolong or delay death, this is the power of God Almighty.[526]

Furthermore, The Saudi Arabia Council of Ulama affirming the above position rejected the act of keeping patients in an invasive life-saving machine. This is where life cannot be restored, some other scholars have agreed to the above view that

[525] Interview with Islamic Scholar Respondent Number 5 at his Office 13/5/2017.
[526] Omar Hasan K. Kasule, "Outstanding Ethico-Legal-Fiqhi Issues," *Journal of Taibah University Medical Sciences* 7, no. 1 (2012): 5.

although it is good to save a life, it is not correct to preserve same where treatment only prolongs life and the treatment does not provide relief or cure.[527] Respondent five also added weight to this position in the following words based on the discussion of Muslims jurist and their verdict:

> "*..the jurist also agreed in a situation where a patient is in a serious illness for a long time and he does not know who is with him or who come to visit him, he cannot do anything for himself or others, he is just like a dead man, he only continue to live with the help of the life support e.g. respirators and ventilators, it is permissible to remove the support for him to die, because the jurist discussed on whether when a person is sick is necessary for him to seek cure or not. Majority of the Jurists accepted that it is not necessary for the sick to seek medication, he can decide to just stay without medication and he has done nothing wrong and nobody will blame him for killing himself, while the minority insist that so long as the disease has a cure and there is medicine for it and if he takes it there is hope he will be relieved of the disease, to them it is necessary for him to seek for medication and if he does not do so and he died, he will be blamed*."[528]

Consequently, the Islamic scholars use the above view to opine that those who agree to seek for medication during ill health is not necessary, and those who said if the patient can get medication with the hope of getting the relief, he has a duty to do so. They said a person who is in terminal illness and he cannot do anything for himself or others, he is just lying down like a dead man and cannot survive it can be withdrawn. Even those who said he must seek for medication it is with condition that there is hope of getting relief in that situation the life support can be removed. They opined that nobody will be blamed for it. The Islamic scholars gave another example where it does not involve removing life support, but it is drugs or any medicine which even if he takes it, it will only prolong his life and suffering. They agree that it is permitted for

[527] Zahedi, Larijani, and Bazzaz, "End of Life Ethical Issues and Islamic Views." 56.
[528] Interview an Islamic Scholar Respondent number 5 at his office 13/5/2017

the doctor to withhold such treatment for the patient to die without prolonging his life and suffering.

However, besides the above situation, any person whose activities lead to the death of any person shall not be allowed to go free under Islamic law, not even by mistake. Is either the killing carries capital punishment (Hudud) or retaliation (Qisas) and even where the relatives forgive he has to fast for 60 days.[529] In this regard, Imam Abu Hanifah, Shafi'I and Hambali classified act of killing into intentional, quasi-intentional and inadvertent homicide.[530] Among the three aforementioned categories, euthanasia has closer relations with the first category. The intentional homicide punishable by death because where a person does any act capable of killing someone intentionally, he has committed homicide. However, it will be interesting to note that Sheik Abdulaziz Ibn Baz, the leader of the Saudi Arabian Council declared that it is unIslamic to hasten anybody's death, but that it is needless the action of some doctors keeping their patient in a permanent vegetative state using life support despite evidence that the patient's life cannot be restored.[531]

According to the above view, active euthanasia is prohibited in Islam but passive euthanasia relating to withdrawal of life support or withholding treatment where from the experience and knowledge of the doctors the patient cannot recover is allowed. This will go well with the necessity face by some Nigerian doctors dealing with the terminally ill patient under life support. Their action for withdrawing such support shall not be blamed, however, the legal framework has to be amended to avoid falling

[529] Aksoy, "Some Principles of Islamic Ethics as Found in Harrisian Philosophy."76.
[530] Ibrahim, "Euthanasia in the Light of Islamic Law and Ethics."23.
[531] Singer, "Sound Board Ehanasia- A Critique."45

foul of the law. This is especially that Islamic law has given room for such practice as a matter of necessity.

3.6 Conclusion

It is settled that right to life is protected under the Constitution and other International Human Rights Instruments. Although there is no decided case to reach this conclusion, response from the interview of some prominent legal practitioners, the literature and the examination of the legal framework, euthanasia is not contemplated within the Nigerian law. The provisions upon which the argument is based are Section 33 dealing with the right to life, Section 34 on the dignity of human person and finally right to personal liberty under Section 35 of the Nigerian Constitution. It is argued that reading together the above provisions according to some scholars euthanasia can be inferred.[532] However, the Sections are dealing with the prohibition against slavery, forced labour, unlawful arrest or any degrading human treatment. The correct position is that terminating the life of any patient is murder. The Penal and Criminal Code and Medical Code of Ethics have prohibited any conduct like euthanasia. Under the Nigerian criminal justice system consent or motive no matter how good will never be a defense to the offence of murder or euthanasia.

Therefore, withdrawal of life supports where it becomes too burdensome and there is no result or for whatever reason also amounts to murder. Doctors will be liable for both breach of professional conduct and criminally responsible for their actions depending on what is proved before the court. The position of Islamic Law on the question of euthanasia is also briefly highlighted because Islamic law forms part of the

[532] Oniha Eraze and Mabel Oniha Osato, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria," *Nigerian Law Guru* 20 (2015):7.

sources of Nigerian laws and is widely accepted and practiced in Nigeria. About 50% of the population in Nigeria are Muslims. Under it also euthanasia is prohibited although some scholars permit withdrawal of life support where the treatment only prolongs life without hope of restoring cognitive function.

This research does not conclude that passive euthanasia is permitted from the decision of the Supreme Court in *MDPDT v. Okonkwo*. What the Supreme Court allowed or recognised is the right of the patient to refuse medical treatment even where it will lead to death. However, this decision will support the view of this researcher that there is the need to recognise some medical practices that are hitherto crimes yet being practiced in Nigeria. The point is, if a patient will be allowed to refuse life-saving treatment leading to death, he will as well be allowed to withdraw medical treatment that can lead to death which will amount to an action or omission contrary to the criminal justice system in Nigeria.

CHAPTER FOUR:

ISSUES ON THE LEGALISATION OF EUTHANASIA IN SELECTED JURISDICTIONS

4.1 Introduction

This chapter discusses the practice of euthanasia from some selected countries that legalised it. The aim is to see study the legal framework in order to derive some lesson therefrom. Agitation and support for the practice of euthanasia is known to have originated and dominated by America and some European countries. There are few discussions about euthanasia in Nigeria and other African countries.

Since the beginning of the debate on euthanasia, the proponents have been asking for the legalisation of euthanasia as a form of recognition of the individual right to self-determination and autonomy.[533] Recently a decision by the Canada Supreme Court[534] declared ineffective the law prohibiting euthanasia and ordered the Parliament to enact a law that will permit euthanasia within twelve months. Bill C14 was passed and assented to exactly June 2016 making assistance in dying a lawful act in Canada.

Probably, from the lesson in Netherland and Belgium, the law in Canada makes the permission available only to those with irreversible pathology with death as a natural

[533] Wole Iyaniwura, "Law, Morality and Medicine: The Euthanasia Dabate," *Global Journal of Human-Social Science* 14, no. 4 (2014):5.
[534]Carter v Canada(Attorney General)2015 SCC 5. https: //d3n8a8pro7vhmx.cloudfront.net/dwdcanada /pages/53/attachments/original/1449527225/carter _v._canada_-_decision.pdf?1449527225. Accessed 5/8/ 2017.

foreseeable event.[535] The argument for and against legalisation was discussed in the previous chapter. This chapter discussed the position of euthanasia in some selected countries that legalised it. This research will assist Nigeria or other countries who may wish to allow the absolute right to autonomy and self-determination including the right to choose when and how to die to form an informed decision. Canada recently legalises the practice. Netherlands, Belgium, Australia and India are chosen because the law permitting euthanasia is developed in these countries.[536]

4.2 Euthanasia in the Netherlands

Netherland is one of the best countries with the good healthcare system, and most of its health institutions were privately owned. The country has well established health insurance scheme that covers all the citizens. The beneficiaries of the scheme pay at the end of every month, where all the healthcare services are paid by the health insurance company.[537] When the hospitals are independent, they make and control their own policies without interference. Surprisingly part of the Health Insurance Scheme includes euthanasia. This is an evidence of how far they have gone on the recognition and acceptance of the practice of euthanasia, despite their Christian orientation. Available literature has shown that Catholic dominated the majority of the Dutch religious belief.[538] Euthanasia is allowed in all the hospital as an alternative to palliative care available at palliative care institutions. This is developed from the experiences of Nursing home, where the Patient Health Insurance will settle the bill

[535] Kieran L. Quinn and Allan S. Detsky, "Medical Assistance in Dying," *JAMA Internal Medicine*, (2017): 7.
[536] Nicole Steck et al., "Euthanasia and Assisted Suicide in Selected European Countries and US States," Medical Care 51, no. 10 (2013): 938.
[537] David Squires and Chloe Anderson, "U.S. Healthcare from a Global Perspective: Spending, Use of Services, Prices, and Health in 13 Countries, The Commonwealth Fund," 2015.
[538] Cohen-almagor, "Why the Netherlands?"6.

for palliative care. The number of reported cases in 2015 reached about 5,516.[539] This report shows a serious increase of about 4.0% as against 2014 which has the total of 5,306. About 65% of all the death in the Netherlands happened in an institution like Nursing Home, Home Care or Palliative Care Institution.[540] This makes the agitation for euthanasia overwhelmingly accepted in the country.

However, on the legal aspect, the development of euthanasia in the Netherlands, agitation for legalisation started after the "*Postma Case*"[541] a very emotional case involving a doctor who carried out euthanasia on her old and sick mother in 1973 by giving her lethal injection of morphine. She was prosecuted and found guilty of murder. The mother has been in a nursing home ever since the time she became paralysed. Evidence has shown that she has been making the request to her daughter to end her life. She made the same request to the staff of the nursing home that she did not want to live anymore. And the daughter yielded to her request in the presence of the daughter's husband who was also a doctor. The court ruled that the lethal injection was not an acceptable reasonable way to end a suffering, but the court acknowledged that it is not the duty of doctors to prolong life at any cost and some situation may warrant the use of drugs that can shorten life.[542] The above case has certainly opened doors for euthanasia debate in the Netherland, especially the other part of the judgment where the court announced that doctors are not duty bound to prolong life at all cost, that some pain-relieving drugs can be administered though they may have the effect of

[539]Neil Francis, "Netherlands - Euthanasia Report Card" (Netherlands, 2015), http://www.dyingforchoice.com/resources/fact-files/netherlands-2015-euthanasia-report-card. Accessed 6//2018

[540] Bernard Lo, "Euthanasia in the Netherlands: What Lessons for Elsewhere?," *The Lancet* 380, no. 9845 (2012): 869.

[541] The Postma decision (District Court, N.J. 1973, 183 (1973).

[542] Rebecca F. Stein, "Philosophical Foundations of Physician-Assisted Death and Euthanasia Legislation in Oregon and the Netherlands : A Comparative Analysis Philosophical Foundations of Physician-Assisted Death and Euthanasia," Scholarly Commons, (2015): 23.

shortening life. The case also makes the Royal Dutch Medical Association encourage doctors to get any euthanasia case reported to the authority concerned which brought the issue to be tabled before the Parliament.[543]

Sequel to the above development, Netherland became the first country in the world to legalise euthanasia via the legislative process.[544] This was concluded in 2002 with Termination of Life on Request and Assisted Suicide (Review Procedure) Act.[545] Despite the public outcry for this development around the world, the legislation was argued to only ratify and made the practice more official. There were numbers of developments leading to the enactment of the above law. One of them is the confusion in the legal framework, because, the practice of euthanasia has been in existence in the Netherland. Sometimes, because of the ambiguity in the law and the defense of necessity (*force majeure)* is recognised. Article 293 and 294 of the Criminal Code 1985[546] made it an offence to terminate or assist anybody to end his life and Article 40 provided for the defense of necessity. Article 40 provides that anybody who is forced by necessity or if the accused make an intentional moral step to break the law and commit a crime as a lesser evil he will not be criminally liable.[547]

The Court in the Netherlands accepted this defense as agreed by the Minister of Justice and Royal Dutch Association.[548] The defense also known as Duress, allows a doctor to break the law in a situation of emergency, severe distress or conflicting duties. The

[543] Raphael Cohen-almagor, "Euthanasia in the Netherlands : The Legal Framework," *Journal of International Law* 10, no. May (2014): 12.
[544] Yuvraj Dilip Patil, "Euthanasia and Death with Dignity" 5, no. 3 (2016): 142.
[545] Julia Amanda Jackson, "The Ethics and Legality of Euthanasia and Physician Assisted Suicide," 2003.
[546] *Criminal Code* (Netherland, 1985).
[547] Dieter Birnbacher and Edgar Dahl, *Giving Death a Helping Hand Physician-Assisted Suicide and Public Policy:An International Perspective* (New York: Springer, 2008), 85.
[548] Henk Jochemsen, "Dutch Court Decisions on Nonvoluntary Euthanasia Critically Reviewed," *Issues in Law and Medicine* 13, no. 4 (1998): 7.

decision of the Supreme Court in *Schoonheim Case*[549] before the 2002 legislation on euthanasia is illustrative. This is one of the decisions that made euthanasia lawful in Netherland even before passing the Act to officially formalise it. The decision made the practice lawful subject to certain conditions known as "Due Care Requirement" building on the defense of necessity under Section 40 of the Penal Code.[550] The defense has been accorded to people who act in a situation of necessity in making a choice between two conflicting circumstances. It is on the bases of this doctrine that the Supreme Court ruled that a doctor who is faced with the request of his patient suffering from excruciating pain with the hopeless solution can be taken as facing conflicting duties as the justification of shortening life.[551]

The defense of necessity under the common law is available only where a person brings a defense to be exempted from criminal liability for what is termed as the balance of evil. The defendant needs to show that he violates the law to avoid a greater evil.[552] This defense does not apply to cases of termination of life because a doctor is being faced with several requests of his patient to end his life because of pain. The defense of necessity argument was rejected in the UK on several occasions, even after the death of *Tony Nikclinson*[553] who initiated the argument in England.[554] In this case, Tony Nicklinson brought a suit before the High Court for judicial review seeking for a declaration to allow doctors the defense of necessity in the case of voluntary euthanasia. Tony suffered from a permanent paralysis (lock-in syndrome). The court

[549] Matter of Schoonhem 158 A.D.2d (1990)183.
[550] *Criminal Code* (Netherland, 1881).
[551] Somerville MA. "Song of Death: The Lyrics of Euthanasia," *J. Contemp. Health L. & Pol'y* 9, no. 1 (1993): 7.
[552] Schwartz S. "Is There a Common Law Necessity Defense in Federal Criminal Law?," *The University of Chicago Law Review* 6, no. 2001 (2008): 1259.
[553] R (Nicklinson) v Ministry of Justice, UKSC 38 (2014), 67.
[554] Sprung L. Charles, "The Importance of Religious Affiliation and Culture on End of Life Decision in European Intensive Care Units," *Intensive Care Medicine* 33 (2007): 1732.3.

rejected his argument and refused the prayers.[555] However, in the Netherland the defense of necessity is not only recognised and accepted, it has also been expanded to include cases of termination of life by doctors. The defense at common law does not extend to termination of life as a matter of necessity.[556] However, the court in the Netherland accepted this defense in *Schoonhein Case*.

It must be noted that if the defense of necessity is recognised doctors will be put in a more serious dilemma. It means doctors will have to discern between the duty to preserve life and the duty to stop unbearable and hopeless suffering.[557] This defense is akin to the principle of *Double Effect* in some other part of Europe and American, where seductive drugs believed to have a pain-relieving effect, are allowed to be used even though they have death hastening effect.[558] However, the defense is wider in the Netherland's jurisprudence than under the common law which has the defense extended to euthanasia practice. It applies when a doctor is faced with two evils that are between the duty to preserve life and duty to provide relief for pain against hopeless ill health. All these happened because of the wide acceptance of euthanasia in the country. The Supreme Court's decision in *Brongersma's case*[559] rejected being tired of life as a ground for euthanasia.[560] In this case, a doctor assisted one of his patients to die. He was a former senator of 86 years of age, who was politically and socially active. But he started having physical challenges and the problem of inconvenience which has started making him socially uncomfortable and unbearable. He contacted his doctor who is trained as a consultant on euthanasia. He held some discussion with

[555] Ann and Selvalingam, "Physician-Assisted Death in England and Wales," 2014. 2
[556] John Alan Cohan, "Homicide by Necessity," *Chapman Law Review* 186 (2006): 15.
[557] Jackson, "The Ethics and Legality of Euthanasia and Physician Assisted Suicide." 34
[558] McCormack, R. M. Clifford, and M. Conroy, "Attitudes of UK Doctors towards Euthanasia and Physician-Assisted Suicide: A Systematic Literature Review," *Palliative Medicine* 26, no. 1 (2012): 30.
[559] Brongersma case, HR 24 Dec. 2002 (LJN AE8772).
[560] Ubaldus De Vries, "A Dutch Perspective: The Limits of Lawful Euthanasia.," *Annals of Health Law Loyola University Chicago School of Law Institute for Health Law* 13, no. 2 (2004): 365.

the senator to ascertain his view and the request was made to end his life. He assisted the former Senator to end his life and thereafter filed a report of what had transpired. In the report, he stated the reason for his action that Brongersma is suffering from loneliness, physical deterioration and or a long time wish to end his life not related to depression. The prosecution decided to prosecute because it was very apparent that there was no compliance with the Due Care Criteria. When he was asked whether there could be any alternative treatment, he answered with no because the person in question understood the implication of his action and that there was no disease to treat and based on that the Prosecutorial Committee decided to prosecute.[561] The Prosecutor submitted that physical deterioration or extreme old age and fear or anxiety over the end of life do not satisfy the due care requirement.

The court became convinced that the request of the deceased was voluntary, there was serious suffering unbearable to him, in short, the due care requirement was satisfied reliance was placed on one expert witness. The doctor was acquitted, but not satisfied the prosecutor appealed. After all the argument the Court of Appeal allowed the appeal and reversed the judgment of the lower District Court. The Appeal Court asked them to guide it on the legality of ending the life of a patient to advise it regarding the legitimacy of the end of life attitude regarding unbearable suffering and the doctor's competence and whether there was consensus on the issues. Both experts' witnesses have a similar opinion that it did not fall within the professional competence and there is no consensus in the profession about its justifiability. Based on these experts' opinions, the Court of Appeal found him guilty. It was held at the Supreme Court[562] that it is a crime for a doctor to end anybody's life based on the reason that life has

[561] Alan G. Williams, *Euthanasia and Law in Europe* (Oregon: Hart publishing, 2008).12.
[562] Brongersma case, HR 24 Dec. 2002 (LJN AE8772).

become unbearable, and it is outside his medical duty. This is, to say the least, the fear of the opponent that there will be an abuse of the process.

According to Article 293 of the Criminal Code, whoever takes any life at the clear and express request of the victim is guilty of a serious offence. While section 294 of the Criminal Code stated that anybody who assists or intentionally incite another to commit suicide or provide for a procedure for that person is guilty of a serious offence, even though suicide is not a crime. The implication of section 293 and 294 is that they clearly make euthanasia and assisted suicide a crime. However, the Parliament amended Section 293 and 294 to permit euthanasia.

Article 293 shall read:

> "1. Any person who terminates another person's life at that person's express and earnest request shall be liable to a term of imprisonment not exceeding twelve years or a fifth category fine. 2. The act referred to in the first paragraph shall not be an offence if it is committed by a physician who fulfils the due care criteria set out in Article 2 of the Termination of Life on Request and Assisted Suicide (Review Procedures) Act, and if the physician notifies the municipal pathologist of this act in accordance with the provisions of Article 7, paragraph 2 of the Burial and Cremation Act."

Article 294 shall read:

> "1. Any person who intentionally incites another to commit suicide shall, if suicide follows, be liable to a term of imprisonment not exceeding three years or a fine of the fourth category fine. 2. Any person who intentionally assists another to commit suicide or provides him with the means to do shall, if suicide follows, be liable to a term of imprisonment not exceeding three years or a fourth-category fine. Article 293, paragraph 2 shall apply mutatis mutandis."[563]

[563] *Termination of Life on Request and Assisted Suicide (Review Procedures) Act*.2002

The Act exonerated doctors from any liability if they can show that they have followed the criteria strictly under the Act and have informed the Pathologist at the municipality therefrom.[564] The amendment of the Criminal Code was as a result of euthanasia cases, where the Committee of Prosecutors General (PG) issued a policy under the watch of the Minister of Justice. The policy stated that any euthanasia case will be decided by the PG whether to prosecute or not. The Prosecutor will be guided by the criteria taking from some euthanasia cases, among which are the voluntary request, hopeless illness and suffering under the consultation of a professional who may not necessarily be a doctor.

Section 1 of the Termination of Life on Request Act provided that a doctor who executes a voluntary euthanasia or assisted suicide will only be exonerated if he can show he acted within the due care criteria. One of the important requirement is the doctor-patient relationship. Who will examine and access whether the patient satisfies the criteria. The criteria requirement is provided under section 2 of the Act as follows:

> "The requirements stipulate that the physician: (a). holds the conviction that the patient's request is voluntary and well considered; (b). holds the conviction that the patient's suffering is lasting and unbearable, with no prospect of improvement; (c). has informed the patient about the situation he/she is in and about his/her prospects; (d). has come together with the patient to the joint conclusion that there is no other reasonable solution for the situation he/she is in; (e). has consulted at least one other, an independent physician, who has seen the patient and has given his written opinion on the requirements of due care, referred to in parts (a)–(d); and (f). has exercised due medical care in terminating the patient's life or assisting in his/her suicide"[565]

[564] Grosse C. and Grosse A., "Assisted Suicide: Models of Legal Regulation in Selected European Countries and the Case Law of the European Court of Human Rights," *Medicine, Science and the Law* no. 497 (2014): 1.
[565] Termination of Life on Request and Assisted Suicide (Review Procedures) Act.2002

The fear of the opponents of this practice has been about the slippery slope and making the vulnerable at high risk of being subjected to unwanted termination of life.[566] However, many supporters insist that as the law is made a safeguard must surely be provided to check excesses of the practice. For example, the above criteria paragraph (e) requiring prior consultation with an independent doctor and the review procedure are the important safeguards to the practice. It shall be added here that the requirement to report every euthanasia case to certain authority will also assist in ensuring good safeguard. More importantly, any doctor who is involved in euthanasia must inform the death to a pathologist who will in return prefer a report regarding the compliance with the requirement of the due care and submit to Public Prosecutor who also must consent before the burial of the body and communicate to the Regional Review Committee.[567]

The reports will be handed over together with the statement of the independent doctor who was consulted by the doctor performing the act and all other relevant documents like the directive or written consent of the patient.[568] The committee will then make its opinion whether based on the medical standard and ethics, the doctor has satisfied the requirement of the law. If the doctor satisfies the requirement PG will not be notified and the matter will be allowed to rest. If the doctor is not able to satisfy the requirement of the law, there are two agencies to report the doctor: The Public Prosecutor and the Regional Health Inspector referred to under Article 1 (g)[569] will determine the appropriate action to be taken against the doctor.[570]

[566] Katrina Haller, "The Right to Life" (Melbourne, 2015),7.
[567] Article 3 Termination of Life on Request Act (Review Procedure) Act 2002
[568] Bood A and H Weyers, *Euthanasia and Law in Europe* (Oregon: Hart publishing, 2008), 295
[569] Termination of Life on Request and Assisted Suicide (Review Procedures) Act.
[570] Penney Lewis, "The Dutch Experience of Euthanasia," *Journal of Law and Society* 25, no. 4 (2016): 637.

Under the Termination of Life on Request Act, the requirement to report the matter to the prosecutor even where they are satisfied that the due care requirement has been complied with has been dispensed with. Now all they need to do is to only send the case that does not comply with the requirement.[571] Although it is within the discretion of the committee to conclude that there is compliance, the prosecutor still reserves the right to carry any further investigation if there is any reason suggesting that a crime might have been committed.[572]

The law provided for a lot of safeguards and control measures to avoid violation and abuse. Apart from the above regulatory system, there are other procedures that assist in the regulation. For example, medical disciplinary bodies and judicial remedy through injunction for restraining order either to compel or to restrain doctors from unwanted medical treatment.[573]One important issue that requires consideration is that since the central issue is voluntary consent of the patient, what will be the position of the mentally retarded and children below the age of 18, is the law extended to them or not? Parental consent must be provided where the child is below the age of 16 which is by implication a 16 year old patient can request for it. The government also allowed euthanasia to be performed on badly deformed newborn babies[574] and this is the fear expressed by the opposition of this practice. A situation will come where something that was meant for voluntarily consented adult will be extended to vulnerable children and mentally retarded people.[575]

[571] Koopman J.J.E. and Putter H., "Regional Variation in the Practice of Euthanasia and Physician-Assisted Suicide in the Netherlands," *The Netherlands Journal of Medicine Published* 64, no. 3 (2016): 18.
[572] Article 10 Termination of Life on Request (Review Procedure) Act 2002
[573] Bood and Weyers, Euthanasia and Law in Europe.12
[574] Ezekiel J. Emanuel et al., "Attitudes and Practices of Euthanasia and Physician-Assisted Suicide in the United States, Canada, and Europe.," *Jama* 316, no. 1 (2016): 79.
[575] Donald J. Boudreau and Margaret A. Somerville, "Euthanasia Is Not Medical Treatment," *British Medical Bulletin* 106, no. 1 (2013): 45.

All that is required to escape prosecution is to show that due care requirement has been complied with, however, it is important to ask a question here. If one of the due care requirement is voluntary consent, how has the committee or the prosecutors arrived at the conclusion that the newly born deformed baby or the mentally retarded patient consented to euthanasia? There is a number of literature showing that even the consented adult has some psychiatric problem that will render their consent negative that is why it is always suggested to have an additional requirement of psychiatric doctors to access the mental balance of any patient requesting to end his life via euthanasia.[576]

One interesting development in the Netherlands for euthanasia practice is the introduction of the Mobile Clinic for euthanasia in the year 2012.[577] The essence of the clinic is to provide death assistance to those who could not get a doctor that can help them, which include helping any person who wishes to die at home. The Clinic Operational Guide provided that patient needs to file a request and the doctors will ensure the due care requirement is complied with before proceeding to the next stage. The doctor will have series of conversation with the family of the patient to ascertain whether the request is voluntary without any coercion or undue influence. The discussion will take a long time involving the team of doctors about six who will assist in achieving the mission either by lethal drugs or injection.[578]

The introduction of Mobile Clinic in the country made it difficult to ensure control or to avoid abuse of the euthanasia practice. It was reported that after its introduction

[576] Scott Y. H. Kim, Raymond G De Vries, and John R. Peteet, "Euthanasia and Assisted Suicide of Patients With Psychiatric Disorders in the Netherlands 2011 to 2014," *JAMA Psychiatry* 73, no. 4 (2016): 362.
[577] Marianne C Snijdewind et al., "A Study of the First Year of the End-of-Life Clinic for Physician-Assisted Dying in the Netherlands," *JAMAInternal Medicine* 175, no. 10 (2015): 1633.
[578] Donald J. Boudreau and Somerville, "Euthanasia Is Not Medical Treatment." 12.

within one and two days about 60 applications were submitted of people wishing to terminate their lives.[579] This is not the intention in the Netherland; this will lead to the conclusion that abuse of the process cannot be avoided. This new Mobile Clinic is described as "Death Squads". In fact, the practice of mobile clinic for euthanasia is not covered by the Act and the Act was not amended to allow such practice. Therefore, the existence and the practice makes any activity of the mobile clinic illegal. It was reported that some people were filing signatures to sponsor a bill amending the euthanasia law to include elderly people who are just tired of life not in any terminal illness or any extreme suffering and pain.[580] *Brongersma's case* gave a very good illustration here; the court has to warn not to allow anybody benefit from the law because he is tired of living.[581]

It is not in doubt that no doctor has a right to assist anybody to die simply because the patient request for it or because the patient finds life unbearable without any terminal illness. Although some scholars argue in support of existential suffering people having the right to request for euthanasia or assisted death if they are competent adult and do not require having any terminal illness.[582] However, the Court in *Brongersma* rejected the argument that all that is required is the competence of the patient. The Court relied on the submission of the two expert witnesses that the doctor's action has no place in the profession and his assistance was not to alleviate pain or suffering because there was none.

[579] Omipidan Bashiru Adeniyi, "Mobile Euthanasia Clinic: An Expansion of the Dutch (Netherlands) Euthanasia Law Without Formal Amendment," *The Law Review* 201 (2012): 35.
[580] Cohen et al., "European Public Acceptance of Euthanasia: Socio-Demographic and Cultural Factors Associated with the Acceptance of Euthanasia in 33 European Countries."
[581] Joe Loconte, "Hospice Care Can Make Assisted Suicide Unnecessary," in Euthanasia Opposing View Point, ed. David M. Haugen Devid L. Bender, Bruno Leon, Bonnie Sxumski (California: Greenhaven Press Inc., 2000), 96.
[582] Robert Young, "Existential Suffering' and Voluntary Medically Assisted Dying," *Journal of Medical Ethics* 40, no. 2 (2014): 108.

The prosecution of the doctor in Brongesrma showed a very good example of intention to ensure safeguard and control, the case exposed the reason many doctors will not report their action. Whenever they terminate or assist anybody to end his life they refuse to report it, and this will be another lacuna that will open doors for more abuse.[583] Like it is always argued the practice of medicine unlike the practice of law where lawyers practice in the presence of the press and other members of the public, medicine is practiced in secret and isolation. It will be difficult to monitor the action of medical practitioners, it will also not be easy to avoid abuse as things are done in a secretive way. It was concluded that half of the euthanasia cases are unreported.[584] Research has shown that ambiguity of the framework also made a lot of Dutch doctors not to report euthanasia cases; some do not want to be the suspect who might have committed an offence.[585] The slippery slope witnessed in the practice is a great lesson for other countries who may wish to follow suit.[586]

The essence of legalising euthanasia in the Netherlands is to ensure openness, to avoid termination of patient's life secretly. However, instead of the law to achieve its goal of providing control and safeguard, it only increased abuse and more demand for it thereby making it look like a good and normal activity. Gunning made the point as follows:

> "The lessons we can pass on to the world is that when you start to admit that killing is a solution to one problem, you will have many more problems tomorrow for which killing may also be a solution. Once you take away the dike that protects us, and if you have only one hole in the dike and we have some experience with dikes in Holland there will be a big flood, the dike will break, and the land

[583] Raphael Cohen-almagor, "Euthanasia in the Netherlands : The Legal Framework," *Journal of International Law* 10, (2014): 1.
[584] H. M. Buiting et al., "Dutch Criteria of Due Care for Physician-Assisted Dying in Medical Practice: A Physician Perspective," *Journal of Medical Ethics* 12, no. 9 (2008): 1.
[585] Lewis, "The Dutch Experience of Euthanasia." 61.
[586] Downie J., "The Contested Lessons of Euthanasia in The Netherlands," *Health Law J* 8, no. 17 (2000): 119–39.

> will be flooded. That is exactly what is happening now in Holland. We talk about the slippery slope. Holland is no longer on the slippery slope; it has turned into Niagara Falls, which we will go down quickly."[587]

Therefore, Netherland being the first country to legalise euthanasia has recorded a numbers of death which increased up to 10% in 2016.[588] While the number of death recorded via euthanasia is about 5875 as at 2016.[589] Other countries like Nigeria and Switzerland have great lesson to learn from Netherland because all other countries that have followed have one thing or the other to borrow from the practice in the Netherland. However, if at all there is anything to learn from the practice is to ensure more effective control mechanism. The case of *Dr. Chabot*[590] is illustrative, where a woman Hilly Bosscher who suffered a great deal of domestic violence and was in depression for 20 years was assisted to die by her doctors. Although the doctor was convicted, surprisingly the Supreme Court accepted that a person may be assisted to die if he is suffering from serious mental and emotional suffering. From the record, she was not suffering physically or any terminal illness. This is not one of the due care requirement. The practice has gotten out of the purpose of permitting it, and that is the danger.

Therefore, it is on the record that good regulatory framework is provided to ensure compliance with the due care requirement. However, it is not good enough that is why the death via euthanasia keeps increasing and there is no strong institution to be checking the record and the report.

[587]K. Gunning, in Proceedings of the Senate Special Committee on Euthanasia and Assisted Suicide, 1994, 88.
[588] Steck et al., "Euthanasia and Assisted Suicide in Selected European Countries and US States." 34
[589] "European Institute of Bioethics, Euthanasia in Netherlands Report 2016" (Netherland, 2017).12
[590] State v. Chabot 478 A.2d (1984) 1136.

4.3 Belgium and its Legalisation of Euthanasia

The legalisation of euthanasia in the Netherland has influenced its development in different part of the world including Belgium, although the struggle was going together in both countries. Euthanasia became lawful at almost the same time with Netherland in 2002.[591]

Euthanasia in Belgium is a crime under Section 393 and 394 of the Penal Code 1867. However, when the Belgium Act on Euthanasia was enacted 2002 termination of life on request was legalised. The law, however, set conditions to be satisfied by both the patient and the doctor. The law was enacted in the same year with the Termination of Life on Request Act (Netherland) 2002. Some differences were identified that the law in Belgium does not include assisted death, it relates only to euthanasia. However, in Netherland, the law includes both euthanasias and assisted death. These were the major differences between the two countries practicing euthanasia.

After the enactment of the Euthanasia Law in 2002, a Commission was established in the same year to monitor the application of the law. The Commission is called Belgium Federal Control and Evaluation Commission.[592] In 2001 Senate in Belgium voted in favour of the law after the commission of Belgium Upper House did the same in the same year. The law made euthanasia no longer a punishable offence if certain conditions are satisfied. This is just like the Act in the Netherlands which amended the provision of section 293 and 294 of the Criminal Code thereby allowing the practice of euthanasia with the satisfaction of due care requirements.

[591] Kenneth Chambaere Sigrid Dierickx, Luc Deliens, Joachim Cohen, "Euthanasia in Belgium: Trends in Reported Cases between 2003 and 2013," *CMAJ* 188, no. 16 (2016): 1.
[592] Section 6 *The Belgian Act on Euthanasia*, 2002.

Studies of euthanasia in some European countries[593] have indicated that majority of the people are in support of the legalisation. Belgium just like the Netherland did not face threat or objection from any religion on the practice, maybe because Dutch people are liberal and devoid of religious extremism. In fact, from the report of the European Values Survey (EVS),[594] Belgium is within the secular-rational and self- expression categories.[595] By implication Belgium has the tendencies of accepting issues relating to self-determination because secular countries have respect for the right to autonomy like abortion, and euthanasia.[596] One of the developments different from the experience in the Netherlands is that the Euthanasia Act is enacted without the contribution of the Medical Association and that divided the views of the members of the association. Some members welcome the development while many were silent about it. There are other members of the Medical Association who expressed their reservation, but one important thing at the time is that passing the law made all doctors in Belgium to be more careful in their practice especially relating to the end of life care and end of life decision making.[597]

The law (Euthanasia Act 2002) lays down conditions to be satisfied where a doctor performs euthanasia in order not to be punished for the crime. Section 3 (1) says:

> "The physician who performs euthanasia commits no criminal offence when he/she ensures that:

[593] Steck et al., "Euthanasia and Assisted Suicide in Selected European Countries and US States."
[594] "European Values Study 2008, 4th Wave, Integrated Dataset. GESIS Data Archive, Cologne, Germany, ZA4800 Dataset Version 2.0.0" (Germany, 2010) European Value Survey (EVS) is responsible for accessing the socio-cultural, moral, religious, and political values of countries. EVS also arrange countries into traditional/secular-rational and survival/self-expression values.
[595] Erin V. W. Andrew et al., "Social-Cultural Factors in End-of-Life Care in Belgium: A Scoping of the Research Literature.," *Palliative Medicine* 27, no. 2 (2013): 131.
[596] Drew Nannini, "Culture, Personality, and Attitudes Toward Euthanasia.," *Omega: Journal of Death & Dying* 72, no. 3 (2016): 247.
[597] Cohen-Almagor, "First Do No Harm: Intentionally Shortening Lives of Patients without Their Explicit Request in Belgium." 13

> 1) The patient has attained the age of majority or is an emancipated minor, and is legally competent and conscious at the moment of making the request;
>
> 2) The request is voluntary, well considered and repeated, and not the result of any external pressure;
>
> 3) The patient is in a medically futile condition of constant and unbearable physical or mental suffering that cannot be alleviated, resulting from a serious and incurable disorder caused by illness or accident;
>
> 4) And when he/she has respected the conditions and procedures as provided in this Act"[598]

The backbone of the Belgium Euthanasia Act is a voluntary request. The first thing for a doctor to do is to ensure that the patient is an adult or minor capable of making a rational decision or request at the time. The request should be voluntary, and without any external influence like coercion or any kind of pressure. The patient must also be suffering from an incurable and unbearable physical or mental condition impossible to find solution or relief and the patient complies with the conditions enumerated in the law. The law also made provision for terminal and non-terminal patients who make a request for euthanasia and provided extra conditions for non-terminal patients. In their case, (non-terminal patients) one month must expire between their written request and the execution. While the doctor responsible must consult a psychiatric or a specialist on the disease at hand.[599] Report of the Federal Commission for Control and Evaluation of Euthanasia Practice indicated that 12726 were euthanized in Belgium, while the figure increased in 2014 and 2015 to 1928 and 2022.[600] It was also reported

[598] Section 3, Belgian Act on Euthanasia, Chapter II No. 1. Http://www.ethical-, 2002.
[599] Section 3 (2) Belgium Act on Euthanasia 2002
[600] Snijdewind et al., "A Study of the First Year of the End-of-Life Clinic for Physician-Assisted Dying in the Netherlands." 6.

that 92% of the patients who requested for euthanasia have a terminal illness, while only 8% are non-terminal.[601]

The legal framework is presently extended to also cover children with terminal illness. The age restriction was removed despite the public outcry.[602] In 2014 it was reported that Belgium becomes the first country that permitted euthanasia for children without any consideration for their consent or voluntary request.[603] Numbers of weaknesses have been identified with the legal framework.

The Belgium Act on Euthanasia 2002 leaves a lot of ambiguities and confusion as many of the practicing doctors do not understand the law themselves very well. It has also created the difficulties of getting consultant or expert independent of each case.[604] His duty is to examine the patient whether he satisfies the requirement of unbearable and mental suffering and then write a report of his findings and later fill a notification form and hand over to the commission. The commission will also examine whether euthanasia was conducted according to the prescribed procedure.[605] It is difficult if not impossible to access with precision the mental suffering of a patient which on itself create a problem for not being able to control the practice because whatever reliance the doctors place on it or make it part of their report there is nothing one can do to ascertain its authenticity and reliability.

[601] Cohen-Almagor, "First Do No Harm: Intentionally Shortening Lives of Patients without Their Explicit Request in Belgium." 14.
[602]Section 3 (1) Belgium Act on Euthanasia 2002, as Amended 2014 http://eol.law.dal.ca/wp-content/uploads/2014/02/Law-of-28-May-2002-on-Euthanasia-as-amended-by-the-Law-of-13-February-2014.pdf accessed 9/1/2018
[603] "Report from "Euthanasia and Assisted Suicide : Lessons from Belgium "," 2014.
[604] Williams, *Euthanasia and Law in Europe*.359
[605] Section 8 Belgium Act on Euthanasia 2002

Another important point is that cases of euthanasia are not adequately reported as required by the law.[606] In the majority of none reported cases, the euthanasia was not done voluntarily and there was no consent. Majority of the doctors are afraid to report the matter and face criminal prosecution. According to the Federal Control and Evaluation Committee, unreported cases are addressed with less precaution than the reported cases. Even the procedure of most of the unreported cases was discovered to be faulty. For example, the use of opioids sedative, not barbiturate and muscle relaxant and even the lethal drugs should not be left to nurses to administer them. Doctors leave everything for nurses to execute. Cancer is one of the most prevalent diseases that makes people ask for euthanasia in Belgium which is very well understood and cancer patient is more likely to have their request accepted than people with other different types of disease.[607] It is included as part of the criteria that any person making the request must have physical or mental suffering. Existential suffering becomes another most dominant reason for most of the euthanasia request in Belgium and is a fact that existential suffering or mental suffering is difficult to diagnose. This opens the door for abuse and non-compliance with the due care requirement of the law.[608]

Literature specified that there is abuse in the practice of euthanasia in Belgium.[609] It was confirmed that in every hundred (100: 3) cases of death three are by lethal drugs or injection without request or consent.[610] Another study has shown that countries

[606] Cohen-Almagor, "First Do No Harm: Intentionally Shortening Lives of Patients without Their Explicit Request in Belgium." 17.
[607] Steck et al., "Euthanasia and Assisted Suicide in Selected European Countries and US States." 23.
[608] Report from "Euthanasia and Assisted Suicide : Lessons from Belgium ." 21.
[609] Cohen-Almagor, "First Do No Harm: Intentionally Shortening Lives of Patients without Their Explicit Request in Belgium." 76.
[610] Raphael Cohen-Almagor, "Euthanasia Policy and Practice in Belgium: Critical Observations and Suggestions for Improvement," *Issues in Law and Medicine* 24, no. 3 (2009): 5, http://www.hull.ac.uk/rca/docs/articles/euthanasia-belgium.pdf.

without legal permission for euthanasia have more cases of abuse than where it is made legal.[611]

In conclusion, many countries could draw on the dilemma and contemplation on legalising euthanasia to know that safeguard and control measures need to be put in place to reduce the level of abuse. It would have been a good idea had the medical practitioner's regulatory body being included as part of the monitors to ensure a better safeguard.

4.4 Euthanasia in Australia

Factors like religion, war, history, and other social issues affect or influence societal impression about death.[612] Euthanasia like other legal development come about through legislative action, judicial interpretation or court decisions as in the case of India through *Aruna Shanbaug v. Union of India & others*.[613] Even prosecutorial discretion under section 2 (4) of the Suicide Act in the UK gives Public Prosecutor the power to decide whether to prosecute for assisted suicide or not.[614] Countries that have legalised euthanasia do it either through judicial process or through parliament.

In Australia, suicide and attempted suicide are no longer crimes, but in all other states, any assisted suicide is a crime.[615] It is the position in Australia even where the patient has a clear decisional capacity and makes a voluntary request any person who assists in such venture will be guilty of murder[616] or aiding and abetting suicide depending on

[611] Ibid.
[612] Ashby M., "Ethical Issues at the End of Life," *Internal Medicine Journa*l 40, no. 10 (2010): 2.
[613] Aruna Shanbaug v. Union of India & other, SCC, 454 (2011) 4.
[614] Melanie Ann and Radhika Selvalingam, "Physician-Assisted Death in England and Wales," July (2014): 110.
[615] Emanuel et al., "Attitudes and Practices of Euthanasia and Physician-Assisted Suicide in the United States, Canada, and Europe."14.
[616] Section 18 (1) (a) *Crimes Act 1900 (NSW),*2011.

the level of participation in the crime.[617] The legal development came around 1997 much earlier than Netherland and Belgium when the Northern Territory first legalised euthanasia and physicians assisted suicide.[618] The law is Right of the Terminally Ill Act of 1995. The key provision of the law is that a person under the age of 18 suffering from the terminal disease has the right to request for physician-assisted death. However, the law could not live long because, under Section 22 of the Australian Constitution, Commonwealth Government has the power to overrule any legislation. The reason given by the Government supported the argument of the opponent of euthanasia. The view of the government was that legalising euthanasia will not make the vulnerable feel safe and it will put fear in their mind. This will also influence their attitude of attending clinic towards a doctor-patient relationship.

The Constitution of the Commonwealth government does not have similar power to overrule state legislation. Many states made attempt to legalise euthanasia but failed, for example, the Bill Permitting Medically Assisted Suicide before Victorian Parliament. The same attempt was made in the Western Australian Parliament that has the Voluntary Euthanasia Bill failed in 1997, 1998, 2000 and 2010 respectively.[619] However, as recent as 2013 Ending of Life with Dignity Bill which is an amended version of another Bill of South Australia introduced in February 2013. In Tasmania, Dying with Dignity Bill was brought to the Parliament in 2009 seeking to establish Right of the Terminally Ill People suffering from hopeless illness to voluntarily request for assistance from medical doctors to end their lives. The Bill was a reflection of the

[617] James Rachels, "Active and Passive Euthanasia," *The New England Journal of Medicine* 292, no. 2 (1975): 78..
[618] Right of the Terminally Ill Act, 1995.
[619] Al-alosi, "A Time to Fly and A Time to Die: Suicide Tourism and Assosted Dying in Australia Considered." 46.

Northern Territory controversial euthanasia Bill, despite the fact that the Bill failed, and their effort toward making it a reality also.

In a recent development, the South Australian House of Assembly faced another Bill in the year 2016 which is the Voluntary Euthanasia Bill 2016. The Bill mainly sought to create a legal right for some category of people with unbearable suffering to request for voluntary euthanasia.[620] In nearly 21 years about 22 Bills were brought before different states in Australia with the aim of making it legal, but all of them failed. The current Bill before the House will have a tremendous outcome considering the development and the shift of attitude from the members over the issue. It must be remembered that voluntary Euthanasia Bill of 1995 has greater margin when it was rejected than Consent to Medical Treatment and Palliative Care (Voluntary Euthanasia) Amendment Bill of 2008 which only failed by two votes. This shows that gradually as the struggle continues Australia will have a law legalising euthanasia sooner than other countries wishing to have it permitted.

Presently, the position of the law in Australia is that suicide has been decriminalised but assisted suicide and euthanasia remained a crime punishable under the law.[621] By implication a doctor is not allowed to provide any assistance or even access to any lethal drugs or injection, is an act outside his duty and contrary to law. This is despite the wide acceptance of the idea of hastening death in Australia; it is yet to come outside the realm of criminal conduct.[622] However, like other European countries particularly common law jurisdictions, the doctrine of *double effect* is taking as a very good

[620] Wilkinson and Savulescu, "A Costly Separation between Withdrawing and Withholding Treatment in Intensive Care." 67.
[621] Section 11,12, 13 *Criminal Law Consolidation Amendment Act (SA) (CLCA))* (Australia, 1983).
[622] Steven A. Trankle, "Decisions That Hasten Death: Double Effect and the Experiences of Physicians in Australia," *BMC Medical Ethics* 15, no. 1 (2014): 26.

defense to doctors. In South Australia, a statute was enacted to adopt the doctrine as a defense,[623] where doctors act with the intention of relieving pain and suffering but resulted in hastening the death of a patient at the end of his terminal illness.[624] The doctrine has been fully explained in the previous chapter as a common law doctrine where it is allowed to provide death hastening drugs with the aim of relieving pain, but the death is unintended although it is foreseeable.[625] It is a form of palliative treatment of the patient in terminal illness with no hope of recovery. The doctrine is argued to be an alternative to euthanasia, hence the incorporation of its practice in the Consent Act in Australia.[626]

Therefore, in the struggle to make euthanasia lawful, Right of the Terminally Ill Act (ROTTIA) 1995 was successfully passed into law and came into effect July 1996. However, the law has a very short lifespan. The Act was repealed by the Euthanasia law, Act 1997.[627] Although euthanasia has a great deal of support from Australian people, its inability to become law and the sudden overturn of the ROTTIA Act of 1995 is a clear evidence of accepting the fear expressed by the opponent of its practice. If taking from the experience of Netherland and Belgium, it is evident that is not an easy thing to control and prevent abuse after legalizing it. Although in the Netherlands the due care requirement required that there should be the report of every case, but from the previous research, majority of the cases are unreported due to fear of prosecution and the unreported cases are filled with abuse. Parties with religious

[623] Section 17(1)(a)–(c) *The Consent to Medical Treatment and Palliative Care Act 1995 (SA) (Consent Act)*, 1995.
[624] R v Adams (unreported, Central Criminal Court, (1957).
[625] Huxtable, "Get out of Jail Free? The Doctrine of Double Effect in English Law." 49
[626] The Consent to Medical Treatment and Palliative Care Act 1995 (SA) (Consent Act).
[627] Euthanasia Laws Act 1997, No. 17, 1997 Section 50 "(1) Subject to this section the power of the Legislative Assembly conferred by section 6 in relation to the making of laws does not extend to the making of laws which permit or have the effect of permitting (whether subject to conditions or not) the form of intentional killing of another called euthanasia (which includes mercy killing) or the assisting of a person to terminate his or her life."

affiliation have little influence in Australia, one may not rule out the fact that religion plays a role in making euthanasia illegal. Legalising euthanasia was unsuccessful because smaller parties with religious affiliation got a lot of relevance in some jurisdiction.[628] This is another indication of the difficulties of seen euthanasia becoming lawful in Nigeria because religion plays a more significant role in influencing political dimension of the country. This is more especially Northern Nigeria where Muslim have the majority and majority of the members of the National Assembly.

However, it must be noted that although euthanasia is illegal in Australia one cannot deny the practice still may be ongoing in view of its acceptance among the citizens of the country. Doctors may be doing it without people's consent. Sometimes even nurses may do it on the instruction of the doctors[629] because there is overwhelming evidence showing that one out of three deaths in Australia was as a result of medical conduct to hasten death which is about 36.5%.[630] Therefore with or without the law, the practice is going on, just like the opinion that there is more practice of euthanasia in countries that refused to legalise.[631] The presumption is that if it is legalised, the law will ensure some level of control and safeguard.

[628] Richard Di Natale, "(Failed) Voluntary Euthanasia Law Reform In Australia : Two Decades Of Trends , Models And Politics," 16,(2016),23.
[629] Liz Flannery, Lucie Michelle Ramjan, and Kath Peters, "End-of-Life Decisions in the Intensive Care Unit (ICU) - Exploring the Experiences of ICU Nurses and Doctors - A Critical Literature Review," *Australian Critical Care* 29, no. 2 (2016): 97.
[630] Trankle, "Decisions That Hasten Death: Double Effect and the Experiences of Physicians in Australia." 56
[631] Jon Yorke, *The Right to Life and the Value of Life: Orientations in Law, Politics and Ethics* (New York: Routledge, 2016), 305.

4.5 The Indian Legal Framework on Euthanasia

The development of euthanasia in India like Nigeria is still at its early stage and the legal framework is not adequate to regulate and control the practice.[632] Doctors are left in dilemma without a clear framework. This position has a tremendous effect on the development of euthanasia as well as healthcare delivery at the end of life.

History has shown that there are many practices in India that can be compared to euthanasia. They are similar because they involve termination of life with or without request. For instance, the practice of "*Senicide*". *Senicide*[633] is the practice of termination of the life of the elderly people. It is being practiced in Tamil Nadu in India. However, one serious difference of the practice with euthanasia is that euthanasia aimed at providing relief to the terminally ill patient. While Senicide is to relief the family from the burden of looking after elderly sick people. Therefore, the procedure of *senicide* is not merciful and is not done for terminally ill but elderly people. Senicide in Tamil Nadu is called "*Thalaikooth*" meaning "Leisure oil bath".[634] In the process, oil is given to elderly people in that community before the crackdown, while throughout the rest of the day the elderly person will be forced to take too much glasses of cold tender coconut water. The intention is to make the temperature of the body to fall thereby causing high fever leading to the death of the person in one or two days. The practice has some similarity with the practice of terminating the life of twins in Nigeria. Both practices are different from euthanasia where the termination of life is done at the request of the patient who must be suffering from a terminal illness and

[632]Raghvendra Singh Shekhawat et al., "Euthanasia: Global Scenario and Its Status in India," *Science and Engineering Ethics*, (2017): 1.
[633] Pyali Chatterjee, "Thalaikoothal: The Practice of Euthanasia in the Name of Custom," *European Researcher* 87, no. 11–2 (2014): 12.
[634] Chatterjee Pyali, *The Customary Practice of Senicide. With Special Reference to India* (India: GRIN Publishing, 2017),7. https://books.google.com.my/books?id=uhMwDwAAQBAJ. Accessed 13/3/2018

under excruciating pain. The investigation revealed that most families in India kill their parent because they cannot afford taking care of them at the end of life.[635] Therefore, it can be concluded that economic reason is one of the factors that influence the practice of euthanasia in India. Already practices that relate to a violation of the sanctity of human life are condoned and practiced in India.

The Indian legal framework on euthanasia started developing not a long time ago. In 2002 Euthanasia Regulation Bill was brought into consideration. The intention of the bill was to allow termination of the life of a person who is terminally ill. However, the bill failed to become the law.[636] At the same time, Dr. R.K Mani Committee was set up by the Ethics Committee of the Indian Society of Critical Care Medicine to provide a guideline to address the issues of life prolonging practice. The committee sought the views of the relevant government departments like Ministry of Law and the Indian Government for an acceptable contribution to improve its report. The government opined that based on the situation at hand the existing legal framework deserves amendment to make it agree with the reality of the situation. One major input of the guideline is that patient or the family should be consulted with regard to withdrawal of life support. The idea of the guideline is to provide a way out for the ICU doctors.

Furthermore, in 2005 a report of the Law Commission of India proposed a Bill "Medical Treatment to Terminally Ill Patient Protection of Patient and Medical Practitioners" 2006).[637] The aim of the bill is to provide a guideline for a patient who wishes to die a natural death without being subjected to life prolonging measures. One

[635] Satyamev jayate Amir Khan, "Don't Waste Your Garbage," *Deccan Chronicale*, 2014, http://pakedu.net/world-education/satyamev-jayate-old-age-episode-11-sunset-years-sunshine-life-15-july-2012/. Accessed 13/3/2018

[636] Rajagopal K., "Open to Framing Law on Euthanasia, Says Centre.," *The Hindu*, 2016.

[637] Law Commission of India, "196th Report Medical Treatment of Terminally Ill Patients (for the Protection of Patients and Medical Practitioners)," 2006, http://www.lawcommissionofindia.nic.in/reports/rep196.pdf. Accessed 16/3/2018

noticeable point in the bill is that High Court can only be approached where there is no agreement between the doctors and family of the patient to withdraw or withhold treatment. Is a good development in India that the issue is being discussed and addressed by different institutions, however, in Nigeria the case is different, no bill has ever been brought about it for consideration and nobody is talking about it while doctors remain in a dilemma.

Under the Indian legal framework, Article 21 of the Indian Constitution provides that "No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law."[638] On the other hand, Section 300 and 309 of the Indian Penal Code 1860 prohibit attempted suicide and termination of life. Although, an exception to section 300 is contained in section 304 where the offence of murder will be reduced to homicide if the death occurs with the consent of the deceased.[639] Section 300 provides:

> "Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused."

The above Section does not have a similar implication with Section 221 of the Nigerian Penal Code. In Nigeria, consent to termination of life does not reduce the offence from murder to homicide, thereby reducing the gravity and the punishment of the offence. The only similarity is the need to prove knowledge of the consequences of the act or intention. In India the prove of motive is encouraged and in this case, the motive of the doctors is to provide cure and relief to his patient unless otherwise can be proved.[640]

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[638] *Constitution of India* (India, 2007)
[639] *India Penal Code Act No 45*, 1860.
[640] RK Mani, "Constitutional and Legal Protection for Life Support Limitation in India," *Indian Journal of Palliative Care* 21, no. 3 (2015): 258.

Therefore, where a patient consents and accepts certain treatment because it is beneficial and useful, he should be allowed to discontinue where it becomes useless and burdensome. In this case, where a doctor after considering the need to discontinue and the appropriate consent of the family is obtained, it should not carry the punishment of culpable homicide under Section 300 of the Indian Penal Code.[641] The presumption is that the patient died of the underline disease not the withdrawal of life support, and the consent of the patient or family will operate to reduce the punishment.

However, a High Court decision in *Gyan kaur V. State of Punjab* [642] brought a serious challenge in the legal framework before the Supreme Court reversed it.[643] The decision of the High Court in *Gyan kaur V. State of Punjab* declare that right to life under Article 21 include right to die and declared that the prohibition of attempted suicide in Section 309 is unconstitutional. In reversing the decision, the Supreme Court of India declared that Section 309 is not unconstitutional and Article 21 of the Indian Constitution does not include right to die. The Article only allows natural death, it does not contemplate unnatural death. The argument of the Indian scholars is that if Article 21 includes the right to live with dignity,[644] but does not include right to die, what should a cancer patient who becomes completely bedridden do, thereby losing dignity in all form, especially where his life completely become helpless and useless?[645] It was suggested that passive euthanasia should be allowed to include assisted death based on the right to self-determination and to live and die with dignity.[646]

[641] Ibid.
[642] Gyan kaur V. State of Punjab SSC 648, 2 (1996) 2.
[643] State of Maharashtra v. Maruty Sripati Dubal, Cri LJ 743 (1987).
[644] Francis vs. Union Territory (A I R SC746) (1981).
[645] Pyali Chatterjee, "Right to Life with Dignity Also Includes Right to Die with Dignity : Time To Amend Article 21 of Indian Constitution and Law of Euthenesia," *International Journal of Scientific Research in Science and Technology*, 1, no. 5 (2015): 119.
[646] Tanuj Kanchan, Alok Atreya, and Kewal Krishan, "Aruna Shanbaug: Is Her Demise the End of the Road for Legislation on Euthanasia in India?," *Science and Engineering Ethics*, (2015), 15.

It must be noted that Article 21 is similar to Section 33 of the Nigerian Constitution 1999 as amended. Substantiating this position, the respondents gave similar interpretation during the interview session. The legal expert specified that the intention of the Section is to protect and ensure the preservation of human life not to allow terminating it without due process of law. Therefore, a similar situation exists in Nigeria and the legal framework is not comprehensive.

As it is today passive euthanasia is lawful in India according to the decision of the Supreme Court in *Aruna Shanbaug v. Union of India & other*.[647] However, before the decision of the Supreme Court of India, some laws contemplate withdrawal of life support where it becomes useless. Another law in India that dealt with this issue is Indian Medical Council Act of 1956. Section 2a joint with Section 33 (m) that in the exercise of its power the medical council of India amended the Code of Ethics of medical practitioners where it declared euthanasia as unethical except where the life support is only used to continue the cardiopulmonary function of the body. In this situation, life support can be withdrawn if certified by doctors.

However, according to the Supreme Court of India passive euthanasia is only allowed under some extreme conditions. The implication of this decision is that Section 302, 304 of the Indian Penal Code 1860 will not apply to cases of passive euthanasia. The Indian Supreme Court stating its reason that you cannot prosecute someone for failing to save a life because in this case, doctors are not doing anything to terminate life, they

[647] Aruna Shanbaug v. Union of India & other, SCC,4 454 (2011).

simply do not save it. The following are the condition to be satisfied and the application must be made to the High Court:[648]

1) Deciding when to stop life support should be left to the parent or the spouse or other close relatives. Where there is no person to take such decision from the close family the decision can be taken by one or two more people as next friend to the patient. The doctor should ensure all decisions are taken in the best interest of the patient.
2) The Supreme Court requires an application to be filed before the high court to seek the approval even where families and close relatives and doctors resort to the withdrawal of life support. The reason for this condition is to avoid mischief from both the doctors and other relatives of the patient, especially on the issue of inheritance.
3) The Court provided for the appropriate procedure to be followed by the High Court when the application is brought before the court. The Supreme Court provided that the Quorum should constitute at least two judges who should determine the application. The court should form its opinion from a committee of three doctors with experience and reputation to be nominated by the Bench after they carefully examined the patient. The Court should also order for all the relatives, next friend to be issued with a notice after hearing them the case should be determined by the court.

It may appear like the legal framework is settled regarding the end of life treatment in India. This is not correct, in the absence of a clear and unambiguous law, the doctors

[648] Pyali Chatterjee, "Right to Life with Dignity Also Includes Right to Die with Dignity : Time To Amend Article 21 of Indian Constitution and Law of Euthenesia," *International Journal of Scientific Research in Science and Technology* 1, no. 5 (2015): 119.

in India continue to be in fear of criminal prosecution. The above condition precedent enumerated by the Supreme Court is too stringent. Constituting the quorum of the court set up the committee of three doctors who will guide the court in reaching its decision seems to be very difficult and time consuming. This is especially because of the delay in the judicial process in developing countries like India and Nigeria. This researcher is not unmindful of the reason of making the conditions stringent. In countries like Nigeria and India if this issue should be allowed by law precautionary measures must be taken against abuse.

Furthermore, it may appear that where doctors withdrawing life support they may benefit from the defense of necessity in India. Section 81 of the Indian Penal Code provides thus: "Act likely to cause harm, but done without criminal intent, and to prevent other harm:"

The likely and necessary implication of this section is that doctors will not be criminally liable for withdrawal of life support leading to death provided the aim is to prevent further harm. The patient refusal to continue with such burdensome treatment is enough to compel doctors to withdraw. Failure to do that will cause more harm to the patient. Therefore, even though the knowledge of the likely consequences exist the act may not be a crime. The uncertainty of the acceptance of this defense in India provided the need for reconsideration of the legal framework.

The case in Nigeria is more closely similar to the Indian situation than Netherland and Belgium. The decision to legalise euthanasia in these countries are based on the right to autonomy and self-determination. At the same time in these countries, there is an overwhelming acceptance of the practice by the society. Cultural and religious conditions do not play many roles like in Nigeria. It is difficult to get the permission

of euthanasia acceptable in Nigeria due to socio-cultural and religious reason. Even the passive euthanasia is being done as a matter of necessity, due to the reasons enumerated in the research problem of this research.

4.6 Conclusion

Recent development about the end of life issues and agitation for autonomy and self-determination lead to the legalisation of euthanasia in some European countries. This chapter addressed both legislative and judicial authorities granting permission for this practice in the Netherlands, Belgium, Australia and India. In the Netherlands for example, a number of cases were decided in favour of euthanasia even before legislative permission is granted. Section 40 of the Netherland Criminal Code dealing with the defense of necessity was extended to cover euthanasia cases. Due care requirements were provided as preconditions to be satisfied to ensure safeguard and prevent abuse. For example, in the Netherland, it is part of the due care requirements that the patient has satisfied the mandatory age limit. He must make a voluntary request from unbearable suffering in a hopeless terminal illness. The attending doctor must report the issue and involve a specialist on the disease. He should ensure that the request is not due to depression and if there is an element of mental disorder a psychiatric must be consulted for a mental evaluation. These due care requirements are necessary conditions applicable in both Netherlands and Belgium.

However, Belgium in 2002 enacted euthanasia Act which amended Section 293 and 294 of the Belgium Penal Code. It makes euthanasia a permissible act where the requirements are satisfied. A commission was set up to monitor the practice to ensure compliance. The law removed the age restriction where a child born with a deformity

or any serious health challenge can receive euthanasia. Despite the conditions, there is overwhelming evidence of non-compliance and abuse.

However, the law permitting the practice in Australia has a very short lifespan. The law was repealed by the government of Australian Parliament. This is because, under Section 22 of the Australian Constitution, Commonwealth Government has the power to overrule any legislation. The reason given is the fear that vulnerable is not safe.

India legalised passive euthanasia in the decision of *Aruna Shanbaug v. Union of India & Other.* The Supreme Court had earlier reversed the High Court decision in *State of Maharashtra v. Marty Sripati Dubal* that declared the Indian Penal Code unconstitutional for criminalising attempted suicide and extended Article 21 of the Indian Constitution to cover the right to die. However, the Supreme Court provided stringent conditions to be satisfied before passive euthanasia can be done. It is our conclusion that Nigerian legal framework will be better if the position in India is adopted with necessary modification to suit the situation.

Findings from the review as contained in this chapter indicated that recognition of euthanasia must ensure good and better safeguard to prevent abuse. This is sequel to the evidence of abuse and noncompliance with the provision of the law put in place. For example, the introduction of Mobile Clinic for euthanasia is not part of the law and the law was not amended before it came into practice. The monitoring bodies established under the Netherland Termination of Life on Request Act to ensure compliance were unable to exercise the desired control. The law that was meant to remove excruciating pain and unbearable suffering turns out to be used by highly depressed and people with unhappy life. The cases of the sentenced rapist[649] and the

[649] Charlotte McDonald-Gibson. "Murderer and Rapist Frank Van Den Bleeken Granted Right to

twin brothers Marc and Eddy Verbessem[650] who were deaf and diagnosed to be blind are good examples. The fears expressed by the opponents of legalising euthanasia were confirmed. The argument for autonomy in favour of the practice lead to serious abuse of such autonomy and the law does not have a good and effective mechanism to provide effective regulation and control.

Should Nigeria decide to legalise passive euthanasia, the focus should be made on ensuring the provision of mechanisms to control and prevent abuse.

Euthanasia rather than the 'Unbearable Suffering' of Life in Prison." *Independent*. 2014. http://www.independent.co.uk/news/world/europe/murderer-granted-right-to-euthanasia-rather-than-rot-in-belgian-prison-9736508.html. Accessed 2/7/2018

[650] Gayle, James Rush and Damien. "Deaf Twins Who Discovered They Were Going Blind and Would Never See Each Other Again Are Euthanized in Belgian Hospital." *Mailonline*. 2013. http://www.dailymail.co.uk/news/article-2261985/Belgian-twin-brothers-killed-doctors-choosing-euthanasia-able-again.html#ixzz4NgyI2wSJ. Accessed 22/7/2018

CHAPTER FIVE:

FACTORS INFLUENCING THE VIABILITY OF LEGALISING EUTHANASIA IN NIGERIA

5.1 Introduction

This chapter explores the factors influencing the practice of euthanasia and explain the convergent in addition to divergent positions (allow or reject). The chapter concludes that accepting the practices of active euthanasia is very difficult due to socio-cultural and religious factors. Consequently, it should be noted that if the identified factors and legal framework restrict on the practices of active euthanasia; the practices of passive euthanasia will have some grounds in Nigeria. The idea of the realities of acceptability of passive euthanasia was further upheld during the interview session. Statistics divulge that Nigeria has a population of 186 million people as at 2016.[651]

There are about 250 ethnic groups. Hausa, Fulani from the North who are dominantly Muslim represents 29% of the total population. Yoruba 21% with 40% Muslims, while Igbo has 17% with Christian's majority from South West and South East respectively. While the remaining percentage constitute the other groups. Muslims make about 50% of the total population of Nigeria, while Christians make 40% of the total population,

[651]National Bureau of Statistics, "Nigeria Population 1960-2018," 2016, https://tradingeconomics.com/nigeria/population. https://tradingeconomics.com/nigeria/population. Accessed 10/1/2018

the balance of 10% are other traditional religions. Despite the population that is expected to be vibrant, about 70% of Nigerians live below the poverty line that is 1.90 dollar per day.[652]

The above background is important in view of the diverse religious and cultural nature of Nigeria. This diversity is manifested in the culture, religion, traditions, norms and on a general note influences the social co-existence as well as the living standard of the citizens of the country. The cultural factors and the different geographical location were glaring, therefore, these make the different societies to consider euthanasia as an issue related to human rights.[653] Some scholars look at it as a necessary evil because of the factors that sometimes influence its practice, especially in Africa.[654] Many scholars look at the agitation for euthanasia as overindulgence. This is because when many developing countries are struggling for survival Europe and America are clamouring for right to die as part of the right to dignity and self-determination.[655]

To buttress some of the views, respondent nine, a Professor of Medicine asserts that legalising euthanasia will have advantages in some cases as some necessary evils.[656] He is referring to a patient with a hopeless pathology whose organ will be useful for other patients with a reversible pathology. Any delay in harvesting the said organs will cause the loss of many lives that may benefit from the harvested organs. These entail that is better to harvest their organs before and use it for the benefit of other people in need. In another instance, a patient that is already on life support whose case is

[652]CIA World Factbook, "Nigeria Population below Poverty Line," 2017, https://www.indexmundi.com/nigeria/population_below_poverty_line.html. Accessed 10/1/2018
[653] Sakali, "The Contemporary Euthanasia Debate in the Light of African World View and Ethics."22.
[654] Dennis Masaka, "A Theoretical Defense of Voluntary Euthanasia in the Context of AIDS," *Journal of Sustainable Development in Africa* 12, no. 5 (2010): 51.
[655] Hendry et al., "Why Do We Want the Right to Die? A Systematic Review of the International Literature on the Views of Patients, Carers and the Public on Assisted Dying."34.
[656] Interview with respondent number 9 at his office 13/5/2017

hopeless will block the chances of intervening to save the life of other patients with reversible pathology. These and many other instances are the reasons the respondent propel for the legalisation of euthanasia in Nigeria.

Corroborating on the other aspect of legalising euthanasia in Nigeria, respondent six a medical doctor stated that once a patient's case becomes hopeless, they engage the family of the patient in order to find a way forward. If the family accepts the life support will be withdrawn. This is done as a matter of necessity, especially as all Nigerian hospitals have limited number of intensive care facilities and beds. The doctor narrated that where they have a patient with a reversible pathology whose life could be saved with some interventions and there is a hopeless patient occupying the space, they withdraw life support. They withdraw the patient based on their prognosis and chances of survival. This situation makes this researcher conclude that passive euthanasia is being practiced in Nigeria. However active euthanasia is not practice. Equivalent Theory corroborated the arguments of this research that both active and passive euthanasia could be said to have the same moral consequences because all could lead to death.[657]

The following factors influenced the practice of euthanasia using the answers given by the respondents in the course of the interview to complement the discussion in the literature. The factors influencing its practice positively or negatively differ from the factors influencing it in the other part of the of the world.

[657] Becker and Charlotte Becker, "Killing And Letting Die," Encyclopedia of Ethics 2 (2001): 947.

5.2 Economic Factors

Many factors and conditions of life including the changing economic situation and the growing population have great influence on death and the practice of euthanasia including the emergence of technological advancement.[658] When technology brought innovations that extend life expectancy especially of a patient with the life-threatening disease, the challenge is that it makes such procedure rather very expensive and more obtainable in relatively more developed countries.[659] Research has shown that one of the reasons many people in the West go for euthanasia or assisted suicide is relieving their family of serious financial burden which modern day medicine brought.[660] In the state of Illinois, for example, life expectancy increase for about 25 years, which strongly affect the end of life care, thereby making it extremely expensive and is contributing to the quest for terminating life. In early 2000 when the struggle for euthanasia became strong, opponent became scared and predicted that economic hardship may force the weak and poor patient to yield to duty to die.[661] As technology advances so also the cost of treatment grows. In Nigeria health sector is one of the critical sectors where up to today Nigerian government could not satisfy the World Health Organization (WHO) standard of budgetary allocation.[662] Even some of the basic or small diseases like fever become a problem to the majority of Nigerians. Many do not have access to good healthcare, and it virtually becomes an industry where only he who has money can buy good health in Nigeria.

[658] Ciaran O'Neill Andriy Danyliv, "Attitudes towards Legalising Physician Provided Euthanasia in Britain: The Role of Religion over Time," *Social Science & Medicine* 128 (2015): 56.5.
[659] Yount Lisa, Library in a Book: Right to Die and Euthanasia, (New York: An imprint of Infobase Publishing, 2007),56.
[660] Cohen et al., "Public Acceptance of Euthanasia in Europe: A Survey Study in 47 Countries."23.
[661] Lisa, Library in a Book: Right to Die and Euthanasia. 56
[662] World Health Organization, "The Nigerian Health System." http://www.who.int/countries/nga/en/ Accessed 26/3/2018

Lack of healthcare facility and abject poverty will account for the quest for euthanasia in Nigeria at least the passive aspect of it if not the active one. Respondents eleven[663] was asked if she would ask for termination of her life if her illness becomes hopeless due to lack of money. She mentioned that:

> "*I will not want to suffer or my family, after all, we all are going to die. So, if death will be better I have no option than to go for it. My reason is that my family will be relieved from the financial burden*"

The fear of the above respondent is a financial burden, the problem and other social burdens affect her opinion on the question of euthanasia. This problem is one of the reason people in the West request for death, the burden on family and relatives; although where there is a strong religious faith this may not be a reason. Therefore, cost of medical attention is one of the problems with the health sector in Nigeria.

It was observed that even manpower communication is enough to create a problem in the health sector in Nigeria.[664] However, in another opinion, the problems of healthcare include inadequate functional surveillance system. While some include[665] health workers strike as part of the problem. Government is not paying attention to the health sector to subsidise the cost for patients. During the conduct of this research, this researcher visited a hospital to interview some patients, but surprisingly many of them have either being transferred or discharged due to health workers strike. A patient died on his way to another hospital from car accident together with his family. In a situation where a patient without financial strength may have to go home, he will remain in pain and agony. Therefore, he will wish his end could be near.

[663] Interview with Respondent Number 11 a Patient at Surgery Ward 13/3/2016
[664] Josephat M. Chinawa, "Factors Militating against Effective Implementation of Primary Healthcare(PHC) System in Nigeria," Annals of Tropical Medicine Public Health 1 (2015): 4.
[665] Ijimakawa, "The Effect of Public Sector Healthcare Workers Strike: Nigeria Experiance." 13.

WHO traces the problem of healthcare in Nigeria to the decade period of the military regime. It is the WHO's view that lack of acceptance of democracy where there will be National Assembly to look into the budgetary allocation of healthcare and to monitor its full implementation under their oversight function may account for the lack of attention given to health sector. But one may argue that why the situation has not changed in more than sixteen years of the uninterrupted democratic process? The situation will not change if those in the affairs of government will have access to medical attention from any part of the world, they will never bother to change the situation from bad to good.[666] In essence, the problem is the failure of government and its agencies to provide hospitals with adequate healthcare facilities and healthcare personnel. These numerous problems are not part of the factors leading to request for death or euthanasia in the West. Above all, in Nigeria and other African countries, the problem of poverty is number one. Not many can afford to sustain a patient with terminal illness because healthcare service is more expensive especially toward the end life generally.

Accordingly, failure of the government to provide adequate facilities and manpower in the Nigerian hospitals expose people to death.[667] This, therefore, means if a patient is with a terminal illness or any serious disease he has no option but to withdraw and wait for death despite the agony and suffering due to financial constraint. If the patient is suffering from kidney failure the cost of dialysis is very expensive. Each session of dialysis is about 25,000 Naira. A patient that cannot afford the cost of dialysis will not be expected to have the money for a kidney transplant. Despite the fact that sometimes

[666] Yvonne Ndege, "Medical Tourism Hurts Nigeria's Healthcare," *Aljazira, News Africa*, 2014, http://www.aljazeera.com/video/africa/2014/01/medical-tourism-hurts-nigeria-healthcare-20141844713647222.html. Accessed 26/3/2018

[667] Kehinde F. Monsudi et al., "Medical Ethics in Sub-Sahara Africa: Closing the Gaps," *African Health Sciences* 15, no. 2 (2015): 673.

the management of the hospital solicit for assistance on behalf of the patient where he is in dire need of one, yet other family relatives run away because of the cost and the burden.

These and many challenges make this researcher put the question to some of the respondents (patient in critical healthcare) whether they think poverty or lack of money to continue battling with their health problem could be a reason for them to request for death.

The research realises that patient from the Southern part of Nigeria mostly Igbo will prefer death than to leave their parent and other relatives with huge financial burden where it is clear their case is a hopeless one and there is no chance of recovery or survival. The respondent number ten said:

> "*Yes, I will ask to be assisted to die if my case becomes hopeless and my family suffers from the pain and financial problem and other social disturbances. My only reason is to relieve them from the financial problem and other disturbances especially when they cannot afford to sustain me on a life support in a hopeless situation*"[668]

The respondent above is a patient from Southern Nigeria, her reactions is an indication that financial burden or economic factor can be a reason for accepting euthanasia, but in this case the researcher noticed from the reaction of one of the consultants from ICU in Northern Nigeria that economic or financial burden should not be a reason to opt for death in Nigeria. He told the viewer that once a patient is admitted into ICU the life support will not be withdrawn even if the patient cannot afford. The Social Welfare Department of the Hospital takes care of that kind of patient. The respondent said the ICU centre runs at loss due to the dire need to manage patient even where they

[668] Interview with Respondent Number 11 a Patient on 13/3/2016

cannot settle the bills. Although even in the ICU is just that the bills are so subsidised that many patients would be able to pay if they are in dire need.

> "*...Here we will go on, you know healthcare here is out of pocket that is the reason why ICU always is not making any profit, because once somebody is there you cannot throw him out because he has not paid, so this is the issue, they are always operating at a loss, most of them have been there for long and have been in the other part of the hospital and accumulated expenses and exhausted themselves*"

According to respondent nine, patients admitted in ICU would not opt for death because of financial reasons, since the hospital will take care of the situation through its Social Welfare Department. However, it must be noted that patient admitted in ICU is not the only one that may be pressured to give up life due to financial reasons. Patients requiring regular sessions of dialysis too. It was observed that among the hospitals in Nigeria only Aminu Kano Teaching Hospital (AKTH) has the cheapest bills for dialysis. Respondent number nine indicated during the interview that basically patients on dialysis pay only for the fluid to run the blood. The amount is so downsised to enable them to have the less financial burden. But still, the amount of dialysis per session will be around 25,000 Naira and a patient will require not less than three sessions in a month. Majority of Nigerians cannot afford to sustain the standard of the required session of dialysis. A similar situation exists for cancer patients who may require serious management on their situation like chemotherapy.[669]

However, in the Netherlands where euthanasia is legal today, healthcare is free for all its citizens which even the United States do not have national healthcare for all citizens.[670] But in Nigeria, not many have access to healthcare; though in some hospital the above mentioned social welfare assist the patient. In the Department, the patient's

[669] Chukwuneke F N. "Ethics of Palliative Care in Late - Stage Cancer Management and End - of - Life Issues in a Depressed Economy," *Nigerian Journal of Clinical Practice*, (2015): 18.
[670] Lisa, *Library in a BoSok: Right to Die and Euthanasia*.49

relatives will be asked if they know anybody that can assist them so that the hospital will write to him officially. In the alternative, the hospital will solicit for assistance on behalf of the patient from some philanthropists. But where all the effort does not yield any result the hospital will look at the possibility of waiving the bills for the patient. Respondent number nine told this researcher that they have a patient that had more than 500 sessions of dialysis which if you calculate the cost not many Nigerians can afford such huge amount of money.

Economic motive makes some scholars to support euthanasia. For example, it consumes money to sustain a terminally ill patient from both the government and the family especially on life support.[671] What makes the argument stronger is the distribution of scarce resources. It shall not be wasted or invested in a fruitless venture, especially where the patient is certified hopeless and not recoverable who will die eventually. But the argument of some scholars is that economic cost and benefit of euthanasia shall not be considered unless the ethical aspect of it has been resolved.[672] In essence, the individual benefit of economic cost or the society can only be looked at and compares after determining whether euthanasia is ethical or not. For example, if it is concluded that killing an individual is unethical and unacceptable, then there is no need to go further to consider whether the said act could have an economic benefit. However, if killing an individual becomes ethically acceptable in some situations, then we can consider the economic cost and benefit of doing so.

Sometimes in Germany,[673] an argument was made that if euthanasia is legalised about 300,000 thousand beds will be made available to the patient with better chances of

[671] Umar Kasule, "'Euthanasia: Ethic-Legal Issues,'" *Mission Islam*, 2014.
[672] Katrina Haller, "The Right to Life" (Melbourne, 2015),15.
[673] F. Wertham, "The Geranium in the Window," *In: J. C. Wilkie (Ed.) Assisted Suicide and Euthanasia Past and Present*, 1998, 75.

survival. In Nigeria one will say if it is allowed beds will be available at ICU for the patient with reversible pathology. This is suggested by one of the respondents in this research. But this will not be an acceptable argument because of the ethical question of allowing euthanasia has not been resolved. The conclusion in this regard is that consideration of cost-benefit of euthanasia is out of the issue in Nigeria since the ethical aspect of it has not been resolved.

One may be tempted to argue that if a patient will be abandoned to die because their situation becomes difficult to manage thereby allowed to die in pain, will it not be better to find relief for them through euthanasia. The question that may be asked is what is the difference between withdrawal of treatment which may amount to euthanasia and abandoning patient to die without some palliative measures because of economic cost and financial difficulties? Failure of the government to provide necessary healthcare for dying patient may be accepted to be an encouragement of patient to seek euthanasia to avoid leaving the family in these difficulties. One of the patients this researcher interviewed[674] corroborates this assertion. She said she will prefer death than to leave her family in extreme financial and social challenges. This view is the view of a respondent from Southern Nigeria which is dominantly Christians Yoruba and Igbos. This is despite their traditional belief that people do not die but join their ancestors, who will be angry if the death is initiated for reasons other than the one accepted by the ancestors.[675]

However, if we take the sample view of those from Northern Nigeria mostly Muslims, their belief is that fear of financial burden for their families and relatives will never be

[674] Interview with Respondents Number 10 a Patient 13/3/2017
[675] Chukwuneke, "Ethics of Palliative Care in Late - Stage Cancer Management and End - of - Life Issues in a Depressed Economy." 4.

a ground to opt for death. As Muslim, they always accept that whatever happens to a person is with the full knowledge of God and God told them that they will be tested with calamities, ill health, and loss of loved ones.[676] The financial burden is no justification to dash hope and accept death as the only solution no matter how hopeless the case is.

However, just like respondent number seven, a doctor narrated that most doctors perform euthanasia. They have been doing it, but they do not know.[677] He restricted his argument to withholding and withdrawal of life-saving treatment which eventually hasten death. In other words, passive euthanasia is being practiced knowingly or unknowingly in Nigeria. And sometimes governments ordered the execution of a patient in the name of public interest, and it will successfully be argued that the reason is economical. For example, there was a patient suffering from Disseminating Tuberculosis, according to the attending doctor of the patient respondent number seven. The patient was put on injection seven times a day for about seven months and to be put on another version of injection for another 16 months. At the time the patient starts getting some relief he decided to withdraw treatment. The government perceived a threat to the public and a financial burden, thereby instructed for his execution through his doctors. The fear is that the disease will spread like a bushfire if not treated and curtailed which will engulf huge amount of government money to put a stop to it. Although this position was rejected by respondent number four:

> "..*The case of the Tuberculosis guy, I am not in a position now to justify what they did, I suspect that we have gone beyond that level, that is very unacceptable and religiously not, government has the resources to be able to quarantine that specific case, put in all the facilities and engage the medical doctors to manage that as test case,*

[676]Narimisa, "Euthanasia in Islamic Views." 2.
[677] Interview with Respondents Number 7 at the Emergency Department of Aminu Kano Teaching Hospital, kano 17/3/2017

> *how many of such cases do they have now, do they know it is that they will continue to kill people all over, that should have been the challenged government should take seclude this man in a quarantine put all the facilities and the personnel that can take care of him as a test case to be able to develop a blueprint with which future cases can be taken care of, can that be worse than Ebola, put the necessary personnel engage them so we can develop interest in managing that situation and God helping us it was managed to a point where we could say it was halted*"

The religious leader condemned this action from the religious point of view. However, respondent three,[678] argued in favour of public safety. It is a Constitutional duty of the State and it is reasonable in a democratic society to kill a person for the purposes of protecting the society[679] especially pertaining to their health.

> "*You see I know under our laws sometimes there are issues related to public safety, so public safety is one of the exceptions to all the human rights provisions, public safety and public security, the point is that we don't care much about community health, like the UK the case bird flu, one it is noticed you have running nose under the law you are not allowed to come out, the implications is that the public will be affected, in their system it is not an individual that takes care of his illness it is the government, so if the disease is spread to other it is the public fund that will be used to manage it*"

In his view, the learned scholar sees reason in using euthanasia to protect the public from the spread of a particular disease for public safety. This argument has economic angle because once the public is affected it will affect the government finances in looking for drugs and other vaccines to keep the public safe. It is the view of this researcher that the reason given above by the learned Associate Professor of Law and the Professor of Medicine regarding the necessity of using euthanasia in some instances is strong enough to push for the amendment of the law in Nigeria. The defense of necessity can be extended to a situation like these. There could not be more cases of necessity than the protection of more lives. This defense is recognised in

[678] Interview with Respondents Number 3 Associate Professor of law at his Office 16/3/2017
[679] Clarfield et al., "Ethical Issues in End-of-Life Geriatric Care: The Approach of Three Monotheistic Religions - Judaism, Catholicism, and Islam." 45.

Section 40 of the Netherland Criminal Code,[680] the situation in which this defense is accepted in the Netherland is not more than the situation faced in Nigeria. It is reasonable if the defense is provided for medical doctors in Nigeria.

5.3 Socio-cultural Factors

Cultural factors play crucial roles in dealing with issues of medical care, health, illness, suffering, life or death and dying. The reason being that socio-cultural factors affect healthcare practice from a different perspective.[681] It also influences or contributes to the understanding of decision making concerning autonomy and self-determination.

Autonomy is central to this study and upholds that cultural differences will have great influence on the perception of this concept especially when compared with the Western and African culture. In the West, it connotes absolute right to self-determination, which includes the right to determine when and how to die. What treatment to accept or refuse, but in the African culture, the right is linked to the social relationship rather than an individual.[682] The family is the basic social unit and plays a vital role in every individual's life. In the West again, illness relate to abnormalities in the organs, body and the system in general, but is much beyond that in the African culture. It includes spiritual and social perspective in addition to body system and organs malfunction. It means, spirit, body, the soul is all interwoven and respect is not absolutely given to science in terms of dying and disease.[683] In conducting this research a question was put to respondent number nine, whether it is possible to have a legal framework for

[680] *Criminal Code* (Netherland, 1881)
[681] Vodiga B. "Euthanasia and the Right to Die--Moral, Ethical and Legal Perspectives.," *Chicago-Kent Law Review* 51, no. 1 (1974): 28.
[682] Jackson, "The Ethics and Legality of Euthanasia and Physician Assisted Suicide." 23
[683] Nortje N. "Cultural Perspective on Euthanasia," *Research in Psychology and Behavioral Sciences* 1, no. 5 (2013): 77.

euthanasia in Nigeria although where it first started has a different culture and social setting from Nigeria. He said:

> "*Is very possible, you know whoever is pushing for it will have to face challenges, there are a lot of laws that come into the country, there will be a lot of issues, religion culture, ethics in addition to the law, one of the captions of doctor's oath is that you have utmost respect for human life not just after birth, but from conceptions till death and there is another aspect which is confidentiality and this must be maintained even after duress. But you see, everything no matter how bad it looks, it will have its advantages no matter how minute e.g. I have two patients, one has acute injury that has the chance of recovery in the next 24 hours if I admit him and do some procedure and another patient with advance cancer that has damaged must of his organs, as human I cannot say this guy has no probability of surviving because God can do anything , but if I have a choice, I will choose the one that can recover, but if that one that may not survive is already on the bed, if I substitute them reasonably I am doing something good, but still the ethics do not allow me to do so, so in the event it comes it will assist in some few situation like this to save life, though that may or may not be euthanasia*."[684]

The response of the professor here shows that although social and cultural issues will make it difficult to have a legal framework for euthanasia in Nigeria, however, other good side of euthanasia shall call for its acceptance. However, there is a problem because is obvious there is inadequate healthcare facilities, poverty and lack of manpower which all contributed to the challenges facing the health sector in Nigeria. It will be necessary for the law to be amended to alleviate the fear and the dilemma of doctors in Nigeria. Saving life shall not have any alternative due to the influence of culture and religion. Interestingly, the area where doctors find dilemma is considered a necessity in all the religions. That is the withdrawal of life support where another patient is brought with reversible pathology and there is the need for the life support.

Socio-cultural differences influence people's attitude toward death, a study of different cultures regarding wish to hasten death shows that family and other social factors

[684] Interview with Respondent Number 9 at his office 13/5/2017

contribute a lot, especially in respect of pain, depression, and hopelessness.[685] Another study conducted in America has shown that about 70% of the respondents have one evidence of preparing for death or the other. While about one fifth has their Will drafted. In fact, it was estimated that one-fourth of the black people had made provision for a cemetery plot and about one eight had made even funeral arrangement.[686] Therefore, it will not be surprised if a society like this accepted euthanasia, their culture made them have less fear of death.

However, any society that has the culture of family support may not also have the fear of becoming a burden.[687] Africa or Nigeria has by its culture being extended family, where sisters, brothers, aunts, grandparent, in-laws are all considered to be part of the unit that forms the family. Every decision concerning any member of the family is taken after due consideration of various factors as a group, so also any problem is shared and resolved together.[688] This takes away the questions of autonomy where the individual decides for himself on every human endeavour including when and how to die, at the same time the fear of becoming a social or financial burden becomes limited. The society is oriented on coming together to resolve any problem affecting any member.[689] However, there is general perception of becoming a burden on the critically ill patient and that influences and increases their fear for social support. This is entirely different from the Western perception where they believe that every

[685] Marjolein Gysels et al., "Culture and End of Life Care: A Scoping Exercise in Seven European Countries," *PLoS ONE* 7, no. 4 (2012): 5.
[686] Bert Hayslip,. Jr., *Cultural Changes in Attitudes Toward Death, Dying and Bereavement*. 21
[687] Cristina Monforte-Royo et al., "What Lies behind the Wish to Hasten Death? A Systematic Review and Meta-Ethnography from the Perspective of Patients," *PLoS ONE* 7, no. 5 (2012), 13.
[688] Chukwuneke, "Ethics of Palliative Care in Late - Stage Cancer Management and End - of - Life Issues in a Depressed Economy." 15.
[689] Gafford J. Searight HR, "Cultural Diversity at the End of Life: Issues and Guidelines for Family Physicians," *Am Fam Physician* 71 (2005): 514.

individual shall have absolute control over his life and he shall be allowed to determine what path to choose including the time, place and manner of his death.[690]

At the same time, one cannot take away the fear of death as a factor influencing refusing the quest for death in an African society.[691] One of the respondents, a patient and a female from Southern Nigeria indicated strong fear of death. Respondents number twelve:[692] "I don't want to die honestly, it will be the last thing I will do to ask somebody to assist me to die, I want to live my life to the fullest."

Contrary, to the perception of the above respondent, two Christian respondents stated that they will not want their family to suffer endlessly for their ill health. If their case is hopeless they will not mind being terminated, so long as it will relieve their parent from any financial burden and other social trauma. Respondent ten said that:

> "*Yes, I will ask to be assisted to die if my case becomes hopeless and my family suffers from the pain and financial problem and other social disturbances. My only reason is to relieve them from the financial problem and other disturbances especially that they cannot afford to sustain me on a life support in a hopeless situation*"

This was further supported by respondent eleven who said:

> "*I will not want to suffer or my family, after all, we all are going to die. If death will be better I have no option than to go for it. My reason is that my family will be relieved….*"

Only the above respondents hold a view such as this, but all the remaining including both the doctors and the legal experts have a contrary view on terminating life for fear of becoming a social burden. Majority of the respondents expressed their fear for

[690] Kelly Green, "Physician-Assisted Suicide and Euthanasia: Safeguarding against the 'Slippery Slope'--The Netherlands versus the United States.," *Indiana International & Comparative Law Review* 13 (2003): 639–81. 7

[691] Waweru-Siika et al., "Brain Death Determination: The Imperative for Policy and Legal Initiatives in Sub-Saharan Africa."5

[692] Interview with Respondent Number 12 a Patient at the Surgery Department 13/5/2017

terminating their lives or others due to its religious implication hereafter. This is showing how strong the influence of religion is to them and the society at large. The same question was put to an elderly terminal cancer patient respondent number thirteen:[693]

> "*No, I will not request for anyone to assist me to die because Allah is the one who put the disease and he will heal me if he so wishes. If this will be the cause of my death so be it, I have no option for what Allah has destined for me… No, because the more I feel the pain the more God washes away my sins, so the pain is a blessing to me because it helps me reduce my burden towards God*"

The social and cultural way of life influence people's perception of issues like death and dying. From this research, it is obvious that Africans and Nigerians are less likely to accept the practice of euthanasia, because of their fear of death and other religious reasons. It is one of the areas where both religions will come together to reject the practice.[694] However, in the case of Nigeria, the amendment to existing legal framework will come as a matter of necessity. There are situations that exist which are beyond human control, there is nothing that can be done, yet the law does not provide the way out.

Assuming victims of fire incident are brought to the emergency unit of a hospital who because of the toxic effect of the fire needs to be admitted in ICU to save their lives. At the same time, there are some patients at the ICU on admission who do not have reversible pathology. It will be correct and ethical if they are removed from the bed to save the lives of those who require some intervention to survive. It must not be forgotten that this practice is illegal because it will lead to termination of life.[695] However, as a matter of necessity, the doctors do not have an option. In an emergency

[693] Interview with Respondent Number 13 at Male Surgical Ward 13/5/2017
[694] Odia, "The Relation between Law, Religion, Culture and Medical Ethics in Nigeria."12.
[695] Section 220 and 308,311, *Penal Code, Cap. P3 Laws of the Federation of Nigeria, 2004*.

situation like that, they cannot be taken to another hospital. This is a serious dilemma for doctors which must be resolved by amending the law. Cultural influence cannot be a hindrance from achieving good medical practice that can save more lives. Cultures can be regulated by law.

Therefore, any amendment or improvement of the legal framework on this issue can put into consideration cultural factors of the society. Euthanasia is mostly unknown to the Nigerian culture. Most Nigerian cultures have the restriction of anything regarding life and death issues. Some cultures found the discussion about death offensive and even annoying.[696] Issues of the death of one member will affect the entire family unlike the Western culture where family structure is built on the Nuclear Family setting which promotes the individual right to privacy and independence. Patients in extremely ill health, who are likely going to die, are encouraged to keep praying as part of the preparation to depart from this world, not to do anything to accelerate the death in the name of the fear of pain or quality of life. Both Muslims and Christians believe that God is the divine Doctor and the healer of body and soul through prayers[697]

A research conducted related to the cultural perspective on euthanasia reported that Africans are more likely not to accept euthanasia, because Africans do not have the culture of surrendering their living affairs in the hand of another person.[698] It was explained further that Africans do not believe in taking their aggression inwards but outwards, and they do not believe in self-destruction as a lasting solution to their

[696] Uzochukwu Uzoma Aniebue and Tonia Chinyelu Onyeka, "Ethical, Socioeconomic, and Cultural Considerations in Gynecologic Cancer Care in Developing Countries," *International Journal of Palliative Care*, (2014): 16.
[697] William L Macdonald and William L Macdonaldt, "The Difference between Blacks â€™ and Whites â€™ Attitudes toward Voluntary Euthanasia Published by : Wiley on Behalf of Society for the Scientific Study of Religion Stable URL : http://www.jstor.org/stable/1388049 The Difference Between Blacks â€™ and Whites ','' *Journal for the Scientific Study of Religion* 37, no. 3 (2016): 411.
[698] Nico Nortje, "Cultural Perspective on Euthanasia," Research in Psychology and Behavioral Sciences 1, no. 5 (2013): 77.

problems. More importantly, they never expect life to be that easy; when difficulties come they accept it as part of human existence. The fact that Africans reject any act of self-destruction is connected to family ties and social factors. A study in South Africa indicated that white men (67%) are more likely to accept euthanasia than black (47%) although they live in the same country under the same condition.[699] Apart from the reason propounded that blacks or African do not take their aggression inwards, but outward or being religiously faithful, it will be difficult to bring the reason why white men have more tolerant for death than blacks.

However, in Nigeria, there were some traditional killings that some scholars discussed under the caption of euthanasia.[700] For example, in the Yoruba community twin babies, in the traditional name called "Ijebu" are killed immediately they were born. The acceptable belief in that community is that they were evil and monstrous. However, by all stretch of the imagination, this cannot be considered as euthanasia. The detail of what euthanasia is has been sufficiently provided in the introductory chapter of this research for reasons like this. It shall not be mistaken that some other inhuman practices of taking life are euthanasia. This practice is just what was known during time immemorial as infanticide, where newly born babies are killed for some traditional beliefs not scientifically proven, but due to ignorance and lack of foresight. Although one can argue that taking the life of the babies is active non-voluntary euthanasia because the life is taking without the voluntary consent of the victims. It must be remembered that euthanasia is an act of merciful killing towards a patient who suffers from an extreme ill health and excruciating pain in order to relieve him from

[699] Brits L.et al., "Opinions of Private Medical Practitioners in Bloemfontein , South Africa , Regarding Euthanasia of Terminally Ill Patients," (2009), 180.
[700] Sakali, "The Contemporary Euthanasia Debate in the Light of African World View and Ethics."13.

the pain. But in this case, the new born babies are executed because of the fear that they may turn to be evil to the society, so the killing is not for their own good.

Another example is the killing of elderly patients in Kikuyu community which was compared with passive euthanasia, although with a closer look, it will not be euthanasia because there is no act of mercy killing at all. In the Kikuyu community, dying patient and elderly helpless patient are taking to the bush and be abandoned with food and water until they die. This act is not merciful in any way toward the victim and it is not requested by the victim to be treated and abandoned this way.

Again, from the sociological perspective of human life, people are meant to live together. They need the cooperation of each other to succeed, and sometimes this extends to even the question of sacrificing one's life for another with more certain chances of survival to live. This social reasoning includes the question of organ harvesting for people with greater chances of survival to benefit. The argument is related to the question of personhood and quality of life. Singer[701] is of the view that lack of quality of life could be a genuine reason for accepting euthanasia. Meaning, a patient with an irreversible pathology who are unconscious and not in touch with social life do not belong to the moral community and there is nothing immoral in taking their lives or harvesting their organs to assist other people with chances of surviving. This is an argument that will be acceptable in Nigerian as a matter of necessity. Since even doctors will tell you to some level of certainty that a particular case is hopeless, they always follow it with a caveat that life and death are in the hand of God and he can perform his wonders. It is against this background that doctors in the ICU tell the family of their patient that the case at hand is hopeless although the family always

[701] Peter Singer, "Voluntary Euthanasia: A Utilitarian Perspective," *Bioethics* 17, no. 5 (2003): 34.

believes that until death, God can do anything. Although this research found out that when a patient with reversible pathology is admitted who needs a bed in the ICU and there is none, the life support is withdrawn with the understanding of the family. This is stated by respondent six:

> "*…we discuss with the relatives of the patient that the patient is going to be vegetative having heard that what they say is whatever happens is God's wish and especially when there are demands of the beds we give that to another patient coming with reversible pathology, in such situation the support is withdrawn (it means you have justification for the practice of euthanasia in this situation), but not as far consideration of financial burden, it does not count here because the charges are very well subsidized and a time it is the hospital management that settles the bills, because the ICU is run at a loss*"[702]

The above argument is based on personhood as opined by Singer.[703] That it is not any wrong if a patient who is in a coma or vegetative state, who in fact lost all qualities of life and social being to have his life terminated because he is less than a person. It was argued that it will be wrong to take the definition of person or question of quality of life to be a factor in determining the acceptance or practice of euthanasia in African or Nigeria to be specific.[704] Reason being that social structures of these societies are different and unique. The Western view on personhood is based on rationality and awareness; hence if a patient is in a permanent vegetative state it will not be wrong to hasten his death. But some African theologians give their own definition of persons which goes beyond the meaning given to it by Singer and other Western theologians. For example, Chalse Nyamiti says:

> "Personality sometimes connotes dignity or worth. In relation to human beings, this implies the qualities to which a human subject acquires an honourable or respectable condition and deserves esteem respect from his/ her fellow human beings. Thus, the sentence "this

[702] Interview with Respondent Number 6 An ICU Consultant at the IC Unit 12/3/2017
[703] Peter_Singer, *Practical Ethics*, 2nd ed. (London: Cambridge University Press, 2002, 1999),80.
[704] Sakali, "The Contemporary Euthanasia Debate in the Light of African World View and Ethics."12.

> is a true man" can be understood ontologically or in the sense of dignity or value. In the ontological sense, it would mean: "this is a being composed of body and soul". In the second sense (often found in Africa and elsewhere) it would imply that the individual in question poses the moral and other human qualities which endow him with dignity and make him valuable and worthy of respect... It is especially this understanding of person more than the others that the African traditionalist manifests in his daily behaviour towards his fellow men or other personal beings"[705]

This definition of personhood is not restricted to just rationality and self-awareness as portrayed by Professor Singer. It includes dignity, and respect for being human and how his fellow human beings shall respect and honour him or her. Gyeke[706] went further to reject the Western view about personhood that it goes beyond rationality and gradual socialisation with other human beings. He further added the practicing of moral life, which means that if a person is not capable of practicing some moral life with other human beings, or he fails to conduct himself in an acceptable moral standard he is not a person. The implication is that since the yardstick of making it right or wrong, ethical or otherwise of terminating human life depends on the personhood of such individual, where such individual is not capable of practicing some acceptable moral life it will not be wrong to terminate his life. Gyeke deviated from the question of the dignity of the human person as explained above. Besides if it shall be taken as argued by those scholars that anyone who is troublesome, disrespectful and not displaying or practicing some moral standard will not be deemed a person and therefore his life can be terminated. It means the unkind, the inhospitable may all have their lives terminated and their organs harvested. This will be a very wrong assertion that cannot be acceptable to Africans and Nigeria in particular.

[705] Charles Nyamiti, ", 'The Incarnation Viewed from the African Understanding of Person,'" *The Journal of the Catholic University of Eastern Africa* 6, no. 1 (1990): 3.
[706] Ibrahim, "Euthanasia in the Light of Islamic Law and Ethics."50.

However, both the Western and African scholar's views about the human person making it the basis upon which life could be worth terminating, do not have regard for culture and tradition. Sanctity of life is what the African culture and Nigerians promote, that is why death, abortion, suicide and infanticide were all rejected in every society in Nigeria. Human life is considered very important that all the laws were designed to protect and safeguard it. It is, for this reason, that respondent number six, an ICU consultant stated that once a patient is admitted into ICU they must continue to sustain his life even if he or his relatives cannot afford to settle the hospital bills. Their reason is that removing the life support will hasten the death of the patient and preserving and ensure its sanctity is number one priority of all doctors. The respondents (doctors) are unanimous that, the only point at which they will remove life support is when the case becomes hopeless and there is no chance of recovery or when there is the need for the bed space where somebody with reversible pathology is brought. Otherwise, the hospital management settles the bills through the hospital Social Welfare Department, all in order to protect the sanctity of life although the patient may lack rationality and self-awareness. Lack self-awareness according to Singer make the patient less a person worthy of having his life terminated and harvest his organs even without his express wishes.[707]

Gomerly[708] threw more weight behind the belief of African culture about the sanctity of human life and rejection of taking the life of irrational and that lacking self-awareness. According to him:

> "Though sadly weakened or wounded or scarcely or no longer able to exercise their autonomy, they remain the very same persons they always were. Their state is in a sense undignified but *is not an*

[707] Peter Singer, "Voluntary Euthanasia: A Utilitarian Perspective," *Bioethics* 17, no. 5 (2003): 5.
[708] Luke Gomerly, "Euthanasia and Assisted Suicide: Seven Reasons Why They Should Not Be Legalised,"180.

> *indignity* (the kind inflicted upon people by demeaning actions). Right down to their death they continue to share in the radical equality in dignity of human beings."

Therefore, lack of quality of life is not a factor that takes away the sanctity of human life and any intentional act by killing such person is a crime under the Nigerian law and irrationality or lack of social and moral ability will not be a justification or a defense to such criminal responsibility. Upon this background, euthanasia has no place under the Nigerian law or culture. However, necessity will compel its recognition and the need for the amendment of the law to ensure safety for Nigerian doctors especially regarding withdrawal of life support.

5.4 Religious Factors

Spiritual belief always has influence on the life of majority of people in the world. Religion moderates patient's perception about their health and treatment.[709] The question of terminating life because of pain and hopeless health problem depends on the religious belief of the patient. Euthanasia is one of the fundamental areas connected to the question of autonomy and self-determination. It is generally prohibited and condemned by both Islam and Christianity. However, refusing to interfere with the inevitability of death on the request of the doctor, family or even the patient himself is not against the principle of Islam. In some other views, the use of life support to delay death is against the interest of the patient.[710] In other words, Islam accepts some aspect of passive euthanasia. This can be linked to the effect of the introduction of technology.

Technological advancement has greatly influenced the practice of medicine especially for the patient under critical care. The development assists in prolonging people's lives

[709] Puteri Nemie Kassim, Fadhlina Alias, and Ramizah Wan Muhammad, "The Growth of Patient Autonomy in Modern Medical Practice and the Defined Limitations under the Shari'ah," *IIUM Law Journal* 22, no. August 2015 (2014): 213.
[710] Dariusch Atighetchi, *Islamic Bioethcs Problem and Perspectives* (Naples: Springer, 2007),290.

as a result of which end of life situations gain serious attention. Ethical and other legal problems increase, with some people clamouring for allowing termination of life on request as part of the dignity of human person. It is not rational to keep a patient on life support indefinitely despite all the suffering and the waste of money and organs.[711] The argument that patients who feel tired of life and suffering shall be allowed to request for euthanasia is considered unreligious. Hence the practice suffered a very wide condemnation from religious perspectives and people with strong religious faith. Studies have shown that religion negatively influences acceptance of euthanasia,[712] however, to what extent has the condemnation went, is discussed underneath this subhead. In the process, an in-depth interview with some religious clerics is used to complement the discussion using the available literature.

Nigeria is a country where religion influenced overall aspect of life including leadership. A population of 180 million[713] with 50% Muslims and 40% Christian will play a significant role in the acceptance of euthanasia. The two religions though totally different in their faith they both share the same values especially on issues that affect moral aspect of life. The two religions get united and speak with one voice when there is something that is against the teaching of both faiths. There was a move in Nigeria to legalise same-sex marriage but both religions vehemently condemned the move. Regarding euthanasia, there are two respondents, a pastor and an Islamic cleric who gave their in-depth understanding on the issue under consideration. It must be noted

[711] Yousuf and Mohammed Fauzi, "Euthanasia and Physician-Assisted Suicide: A Review from Islamic Point of View."14.
[712] Ellen Verbakel and Eva Jaspers, "A Comparative Study On Permissiveness Toward Euthanasia : Religiosity , Slippery Slope , Autonomy , and Death With Dignity," *The Public Opinion Quaterly* 74, no. 1 (2016): 109.
[713] CIA World Factbook population Statistics, "Demographics of Nigeria," *Wikipedia*, 2017, http://cs.mcgill.ca/~rwest/wikispeedia/wpcd/wp/d/Demographics_of_Nigeria.htm.Accessed 26/3/2018

that both religions condemned any act of terminating life for whatever reason.[714] However, from the in-depth interview and the available literature, there are instances where euthanasia can be tolerated as a matter of necessity.

Euthanasia is prohibited by both religions, what the two major religions uphold is the sanctity of life.[715] Studies have indicated that religion is the strongest factor against the legalisation of euthanasia.[716] Respondent number one, a legal practitioner with verse experience suggested to this researcher in the course of the interview that, this issue cannot be studied well without looking at the religious perspective on it. Hence the study includes among other pastors and some Islamic clerics stating their religious viewpoint. He says:

> "*You cannot divorce them because any religion you look at knows that there is somebody who created that life and that being says that life has value and it cannot be terminated in any circumstance. If your thesis relates to the legal point of view, I want to add that you cannot deal with it without looking at the religious aspect of it*"[717]

Although it was part of the research the suggestions reassured the need for religious perspectives on the issue. Both the pastor and Sheik are unanimous about the prohibition of euthanasia in their respective religions. According to the pastor terminating anybody's life for whatever reason is not within the contemplation of any religion, Respondent number four says:

> "*Let me start as a Christian from the religious point of view, I know that one of the commandments God has given is "thou shall not kill" and God did not make any exceptions, I know an instance of war yes is either you kill the enemy or the enemy kills you, outside that if we are to follow the injunction of God there is no reason for which a*

[714] Puteri Nemie Jahnkassim and Fadhlina Alias, "The Ethical , Legal and Islamic Perspectives on Advance Medical Directives," in *Encyclopedia Of Islamic Medical Ethics-Part III* (Jordan Society for Islamic Medical Sciences, Amman-Jordan, 2017), 65.
[715] "The Sanctity of Human Life. In: Islamic Code of Ethics. In Islamset Site.," 2012
[716] Yousuf and Mohammed Fauzi, "Euthanasia and Physician-Assisted Suicide: A Review from Islamic Point of View." 64.
[717] Interview with a Legal Practitioner, Respondent Number 1 at his Law Office 9/3/2017.

> *man shall kill another person, but when it comes to the issues of euthanasia because somebody is going through pains and suffering I think is not justifiable, because there is time such decision is simply taken not with the consent of the patient*."[718]

However, looking at the last part of his response, can it be assumed that if the patient gives his consent euthanasia may be justifiable? The pastor said no, that even those who commit suicide are in serious transgression of God's commandment and their punishment awaits them. Respondent number ten and eleven were also intimated whether they will terminate their lives because of sickness that is terminal and hopeless? They expressed their fear that they will be put in the hellfire. However, both of them would not mind if their lives could be terminated by a doctor to ease their suffering and the burden on the family. Their response shows that Christians are likely to accept euthanasia than their Muslim counterpart. Similarly, respondent number thirteen a Muslim indicated that all Muslims believe pain and suffering are from God and if you take it in good faith there will be a reward for it and it is an atonement of sin. Therefore, he will never wish to have his life terminated for whatever reason.

A study conducted in Britain on the attitude toward legalisation of euthanasia and the role of religion; provide further evidence on how religion becomes one of the major factors towards accepting or rejecting euthanasia. The result of the study showed that the support for euthanasia in 1983 and 1984 was 76% and 75% respectively, but 83.86% in 2012 indicating a serious increase mainly due to the increase of secularisation in Britain.[719]

It is a fact that Africans are more religious than the Westerners; therefore, it will not be a surprise if the support for euthanasia has this wide acceptance. Euthanasia will

[718] Interview with Respondents Number 4, A Pastor at his office 12/4/2017
[719] Ciaran O'Neill Andriy Danyliv, "Attitudes towards Legalising Physician Provided Euthanasia in Britain: The Role of Religion over Time," *Social Science & Medicine* 128 (2015): 56.

face a more serious huddle in Nigeria than in other Western countries. This is despite the fact that factors like lack of healthcare facilities and access to those available will contribute to the patient losing their lives at home due to abject poverty. Therefore, Nigeria is not the only country where religion will play a major role in accepting or rejecting the practice of euthanasia, but also some part of the West. The only difference is that presence of religion in Nigeria contributes to rejecting euthanasia. However, the absence of religion makes euthanasia to be accepted in the West. In essence, religion does not stop people in the West from accepting the practice of euthanasia. There was a lecture series organised by Brunel University in the UK, majority of the audience voted against leaving the issues of life and death to be controlled solely by God. Individual should have the right to play a role in the determination of their time and manner of death. Holding on to this view is related to lack of strong religious faith. Respondent number four a pastor is of the view that nobody with strong religious conviction will support the idea of terminating life for whatever reason:

> "*like I said if you have a religious conviction like mine, the effect is the same whether you call it euthanasia, passive or active or whatever it does not change any meaning so long as the effect or the result is that you want the person's life to just slip away, whether in pain or not pain he should just go away I think it still amounts to taking a life*."

Based on the above view, it can be concluded that where there is strong religious conviction in any society euthanasia will hardly be accepted. The reason being that doctors who are the major actors in medical practice put religious faith as the reason for not indulging in the practice.

However, it must be noted that religious prohibition of euthanasia does not include passive euthanasia in some situation. Some aspect of euthanasia is accepted by both the two major religions in Nigeria that is Islam and Christianity. Islam for example,

prohibit voluntary death either taking by the deceased himself or on his request by another.[720] The key factor is that life is sacred and only God decide when to take it. An individual no matter the situation cannot terminate life is an act considered to be one of the highest transgression against God unless of course through the due process of law. For example, killing who kills another or an adulterer.[721] According to respondent five:

> "*…Islam absolutely prohibits the taking of anybody's life simply because he is in extreme suffering and pain... so even jurists are unanimous here that it is not permitted to hasten the patient's death*"[722]

According the above autonomy and self-determination cannot be accepted to the extent of determining when and how to die in Islam. Whether or not suffering and pain become unbearable even when the case is hopeless. However, the respondent (number five) said, this issue was tabled before the Saudi Arabian Council of Ulama, where the above view was upheld. However, an exception was made. Where a patient is in a state of hopelessness and all treatments will only prolong his life, and increase his suffering and financial burden, there is no problem if all treatment and support are stopped. The scholar added that is also similar to withholding any treatment that will not add any value to his life or health. The jurist relied on the argument on whether it is necessary for every sick person to seek medical treatment, which left the jurists divided into two. Some are of the view that it is necessary if the treatment exists and can bring the expected relief, but the majority opined that it is not necessary for any sick person to seek treatment. Respondent five said that:

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[720] Mehran Narimisa, "Euthanasia in Islamic Views," *European Scientific Journal June* 2, no. June (2014): 172.

[721] Mark A. Clarfield et al., "Ethical Issues in End-of-Life Geriatric Care: The Approach of Three Monotheistic Religions - Judaism, Catholicism, and Islam," *Journal of the American Geriatrics Society* 51, no. 8 (2003): 1149.

[722] Interview with Respondent Number 5 an Islamic Scholar at his Mosque 13/5/2017

> *"…the jurist also agreed in a situation where a patient is in a serious illness for a long time and he does not know who is with him or who come to visit him, he cannot do anything for himself or other, he is just like a dead man, he only continue to live with the help of the life support e.g. respirators and ventilators, it is permissible to remove the support for him to die (the quality of life is bad)."*

Based on the above view the jurist validates the act of withdrawing or withholding medical treatment where doctors from their knowledge and experience confirm with certainty that the treatment only prolongs the life of the patient without any therapeutic benefit. They argued that the life support or the treatment can be withdrawn because it will not change anything. This view is similar to the view of Islamic Medical Association of North America (IMANA), they condemned any act of hastening the death of any patient, but agreed that where a team of expert (Doctors) believe death becomes obvious a patient shall be allowed to die without being subjected to another form of hardship by using mechanical machines to preserve his life. They further argued that even where the patient is already on some life support same can be withdrawn once death becomes imminent.[723] Although one can pause and ask a question here that how can a person being human declare with certainty that an individual cannot survive an ailment, while all Muslim believe that life and death are in the hands of God. No one doubts the ability of science, but over reliance on it will create another serious problem especially on the question of life and death. This further complicate the role of doctors in this case. The capacity to know with certainty that death is inevitable.

The famous learned Islamic Scholar from Egypt Al Qardawi[724] does not see anything wrong in withdrawing or withholding useless medical procedure since the essence of

[723] Athar and Fadel, *Islamic Medical Ethics: The IMANA Perspective.*
[724] Yusuf Al-Qaradawi, *Fatawa Mu'asirah,* (Egypt: Dar al-Wafa il al-Tiba'ah wa al-Nashr wa al-Tawzi, 1993), 527.

medicine is to maintain the process of life, not the dying process. However, Ayatollah Khomeini from the Shia school does not accept any form of euthanasia active or passive voluntary or involuntary which include withholding and withdrawing of life support.[725] According to the majority of Muslim scholars including the majority view of Shia there is a moral difference between withdrawing and withholding of treatment in Islam. It can be withheld if it will not add any benefit to the patient, but once inserted it cannot be withdrawn if it will hasten death.[726] Therefore it will be correct to conclude that Islam prohibits active euthanasia but allow passive one based on the view of the majority of the jurist on withholding and withdrawing of burdensome medical treatment.

Having said that on the position of Islamic jurisprudence about euthanasia, the position is similar to the Christian faith. The general belief of Christian followers is that every human life has an unconditional virtue from conception till death and that no one can take it except God. Reliance has always been put on the verse of the bible "thou shall not kill." This is the view of all the respondents both Christian and Muslims in Nigeria.[727] Any act of making euthanasia legal will have to pass through the National Assembly because it is difficult to achieve it through judicial activism as expressly stated by the Indian Supreme Court. Therefore, there is the need for the intervention of the legislature if there is dire need to regulate the practice and put to rest the struggle for making euthanasia legal.[728]

[725] Narimisa, "Euthanasia in Islamic Views." 21.
[726] Clarfield et al., "Ethical Issues in End-of-Life Geriatric Care: The Approach of Three Monotheistic Religions - Judaism, Catholicism, and Islam." 1158.
[727] Serour G I. "What Is It to Practise Good Medical Ethics? A Muslim's Perspective.," Journal of Medical Ethics 41, no. 1 (2015): 121.
[728] Kanchan, Atreya, and Krishan, "Aruna Shanbaug: Is Her Demise the End of the Road for Legislation on Euthanasia in India?" 23.

A similar opinion was expressed by the European Court of Human Right that making euthanasia a legal act is the right of an individual state to choose to do so through their Parliament. Therefore, the need for the amendment of the legal framework in Nigeria to recognise euthanasia is a matter of necessity. Religion is one the factor that influences the rejection of euthanasia; however, both religions in Nigeria recognise the very type of euthanasia, Nigerian doctors are practicing due to necessity. Therefore, what is needed is for laws to be amended to accommodate the situation in order to remove doctors from their dilemma.

5.5 Conclusion

In this chapter, the researcher examined the practice of euthanasia in respect of the factors that have an influence on the acceptance or rejection of euthanasia in Nigeria. The finding and the conclusion are that although these factors do not present a good case for euthanasia in Nigeria, there are reasons that will make euthanasia a case of necessity. The needs for organs to assist other patients with strong hope of survival, and patient with reversible pathology in need of life support which is already connected to another patient and other situation. They are necessities that culture or religion shall not be a reason not to consider amending the law.

It has been identified that fear of the dying process especially with the technological advancement leading to subjecting patient into unwanted medical treatment with pain and agony make the people in the west opt for easy and more dignified death. As it has been discussed in this chapter Africans fear death and they do not have the culture of taking their aggression inward, but outward. Having examined the factors that may negatively or positively affect the recognition of the practice of euthanasia, the conclusion is that so long as the necessity of saving a patient with reversible pathology

exit it remains a necessary factor to recognise euthanasia in Nigeria. It has also been shown in this chapter that with lack of availability of organs, euthanasia offers a good opportunity to harvest more organs. A study has shown that many euthanasia beneficiaries have given consent and donated their organs to other patients to save lives. In Nigeria cost of dialysis is expensive for kidney failure patient. Even where they wish to opt for transplant getting the organ is another serious challenge, however, euthanasia provides a good avenue for good and reliable organs to be provided.

Furthermore, since the two major religions in Nigeria have accepted passive euthanasia in form of withdrawal and withholding life support its recognition will not be difficult to accept. Respondents who are religious scholars of both religions agree that where treatment becomes fruitless and hopeless it can be withdrawn. Therefore, since the law makes it a crime because it leads to death, the law needs to be amended.

CHAPTER SIX:

RECOMMENDATIONS AND CONCLUSION

6.1 Introduction

This chapter concludes and makes some recommendations on how to go about amending the law to recognise passive euthanasia in order to alleviate the fear and the dilemma of the Nigerian doctors. The reason for the recommendation on improving the legal framework is because the legal framework is inadequate. Another reason for the amendment is that doctors are left in a dilemma situation especially during the end of life period. The recommendations are made based on the practical investigation and the examination of the end of life process in Nigeria. The findings of the research indicated that there is the need for legislative intervention and social policy to save more lives.

6.2 Major Findings

Generally, the findings of this research show that cultural and religious factors, the attitude of doctors, and the legal framework influence the practice of euthanasia in Nigeria. However, most doctors restrict the meaning of euthanasia to active euthanasia, where Morphine or any lethal drugs and injection is used to hasten death. Passive euthanasia is mostly ignored as inconsequential, for example, withdrawal of life support. However, doctors gave the excuse where the case is hopeless and when

patients with reversible pathology are in serious need of the life support and is not available. These reasons necessitate doctors to withdraw the support after consulting the family of the patient. The findings of this research include:

6.2.1 Finding on the Need to Recognise the Practice of Euthanasia in Nigeria

Literature indicated that the health sector in Nigeria is bedevilled with lack of healthcare facilities, the high cost of medical care, lack of healthcare insurance among others. However, some of the factors can negatively or positively influence the practice of euthanasia in the Nigerian context.

1) **Influence of Cultural and Religious Factors**

Nigeria is a country with the multiethnic background, however, three major ethnic groups are dominant and persuasive in both religion and other cultural influences. For instance, the Hausa/Fulani in Northern Nigeria mostly practiced Islam; Igbo in the eastern part of the country commonly followed the Christian faith and the Yoruba from the Western Nigeria practices both Islam and Christianity. History indicated that upon all these three ethnic groups only the Yoruba's have the records of a practiced like euthanasia, they engaged in the killing of innocent people due to the cultural belief that, death is better than being put to shame or pity. This could be attested by the words of a prominent Yoruba man, thus:

> "I feel that a person who is honest and good should die peacefully. As a Yoruba man, it is my belief that only the wicked should enjoy pain as a starting point to eternal pains beyond. Human life on earth is transitory yet the last days of heart breaking agony cannot be part of preparation for a greater life"[729]

[729] Ibrahim, "Euthanasia in the Light of Islamic Law and Ethics." 3.

Therefore, the above view may be a justification for the saying that euthanasia takes place in Nigeria in the name of cultural belief without the knowledge of the authorities.[730] Therefore, Yoruba society is one of the groups that may see it as a viable option to suffering and agony. However, one cannot rule out the role plays by religion in shaping so many cultural beliefs in Nigeria. In Northern Nigeria where religion is considered as the culture and tradition of the majority, euthanasia is not contemplated. Faith in God makes the sick to feel relief that one day the pain will be over and according to religious teaching, pain is a factor that washes away sins. Therefore, life difficulties became a welcome calamity based on the Islamic teaching. Therefore, euthanasia is the last thing to be contemplated by an average Muslim in Nigeria. Interestingly both the South and West where Christianity plays a stronger role the same position is obtainable. All the respondents in this research expressed concern about their religious faith in accepting euthanasia practice.

A critical look at the dimension of both passive and active euthanasia, one may say that some aspect of euthanasia is accommodated by Muslim scholars. An Islamic scholar stated that there are instances where Islam will allow withdrawal of life support and allow the patient to die, especially where doctors certify from their knowledge and experience that the patient is suffering from a none recoverable illness and that his stay on the life support only extend his lifespan but does not benefit him. The scholars are unanimous that such life support can be withdrawn by the doctors and hence, they will not be blamed. This is one justification for the practice of passive euthanasia from the religious point of view. Therefore, finding of this research indicated that culture and religion in Nigeria do not support the practice of active euthanasia.

[730] Bamgbose, "Euthanasia: Another Face of Murder." 14.

2) **The Need for Euthanasia from the Medical Perspective**

Organ donation is one of the serious challenges faced by the victim of kidney failure in Nigeria. It is believed that if some aspect of euthanasia is permitted by law a lot of lives will be saved since organs of the terminally ill can be harvested before they die and have their body decomposed.[731] A professor of medicine (respondents nine) stated that the practice will assist in saving many more lives, especially for those who require organs transplants, it will help in removing the organs before the patient dies which save the organ from the risk of being decomposed. It sounds persuasive that if the law allows a situation where a patient is in a permanent vegetative stage without the hope of recovery to harvest his organs for the purposes of saving the life of others.

6.2.2 Legal Position of Euthanasia in Nigeria

Finding from the interview conducted with some prominent legal practitioners, the literature and the examination of the legal framework, euthanasia is not legal in Nigerian. The provisions upon which the argument arose are Section 33 dealing with the right to life, Section 35 and 34 of the Nigerian Constitution on personal liberty and human dignity. According to some scholars, euthanasia can be inferred from these Section.[732] However, these Sections cannot be interpreted to include euthanasia. This is a unanimous view of all the respondents in this research. According to respondent three:

> *"Euthanasia is not within the contemplation of the Nigeria law. Intentionally taking life is a crime. Euthanasia is a crime. My answer is no. Our religion and cultural values have to be used in interpreting our laws. But it is allowed in certain countries, though*

[731] Huddle et al., "Death, Organ Transplantation and Medical Practice." 16.
[732] Osato, "Euthanasia and Assisted Suicide as Basic Constitutional Rights under the 1999 Constitution of Nigeria." 7

it is illegal in England and that is why some people travel to those countries that make it illegal to achieve their aims"

The learned advocate summarised the findings of this research on the practice of euthanasia in Nigeria within its legal framework. However, the decision of the Supreme Court in *MDPDT v. Okonkwo* was on the recognition of the right to refuse medical treatment even where the refusal could lead to the death of the patient.[733] This decision created a serious confusion as to whether such right could also include right to withdraw life-saving treatment which could lead to death. Another advocate a respondent in this research suggested that the Supreme Court should reconsider this decision. However, a distinction has been made by the above advocate where he said:

"*The decision of the Supreme Court is not strictly on euthanasia, is on the right to refuse medical treatment. I have the right to say do not give me that injection or I do not want that treatment and I can die in the process, is different from where I elect and call you as a doctor that come and give me an injection, I am tired I want to go. Or where a patient is bleeding but said he does not want to be touched, he prefers to be treated by a native doctor and he died in the process, that is not euthanasia it is the patient right to refuse treatment"*

In the agreement of the above view, it is the findings of this research that there is still the need for reconsideration of this decision by the Supreme Court of Nigeria, because it all gets down to right to dignity of the human person upon which all those agitating the right to die and euthanasia based their claim.

6.2.3 The Practicing Euthanasia Nigerian doctors by despite its Illegality

This research discovered that passive euthanasia is being practiced in Nigeria. However, doctors do not withdraw life-saving treatment or life-supporting machine

[733] Medical and Dental Practitioners Disciplinary Tribunal v. John Emewulu Nicholars Okonko, LPPELR. (2001).213

unless there is another patient with a reversible pathology who is in need of the machine and is not available. Respondents an ICU consultant said they do that after informing the family of the hopeless situation and reach a compromise and their practice is devoid of any agent to hasten death. However, under the Nigerian criminal justice system consent or motive no matter how good will never be a defense to criminal responsibilities.

6.3 Suggestions/Recommendations

The following are the recommendations for the amendment of the laws and other suggestions in order to ease the difficulties of patients with a terminal illness as well as offer protection to the medical doctors:

6.3.1 Recommendations on the Amendment of the Existing Legal Framework

Having discussed the relation of the human right to the practices of euthanasia, the researcher suggests the following recommendations:

6.3.1.1 Fundamental Human Rights

Provision of Section 33 of the 1999 Constitution of the Federal Republic of Nigeria needs to be amended, the Section shall now read:

> 33.(1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. (2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary - (a) for the defence of any person from unlawfull violence or for the defence of property: (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or (c) for the purpose of suppressing a riot, insurrection or mutiny; (d) **where a patient with terminal illness, in a vegetative state is withdrawn from life support to save the life of a patient with reversible pathology**. (The bold is the amended part)

The following section of the constitution requires amendment to make right to health enforceable.

Chapter II of the 1999 Constitution particularly Section 17 (3) (d):

> "The state shall direct its policy towards ensuring that- there are adequate medical and health facilities for all persons;

Section 6 of this Constitution that makes section 17 (3) (d) unenforceable shall be amended to be made enforceable: The judicial powers vested in accordance with the foregoing provisions of this Section- 6 (c)

> "Shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in chapter II of this constitution"

The powers of the judiciary shall be extended to include matters listed under chapter II of the Fundamental Objectives and Directive of State Policy, particularly Section 17 (3) (d) of the Constitution of Nigeria 1999. This is with regard to the health of the citizens and healthcare generally. Or in the alternative, it shall be included as part of fundamental human rights as is the case in South Africa. It shall be made a subject of litigation; any individual shall have the right to sue any government that refuses to provide such facilities. This will assist healthcare generally in Nigeria and it will also assist the implementation of the recommendation of this research.

6.3.1.2 Criminal Responsibility

Section 220 of the Penal Code, the offence of murder shall be amended as follows:

S. 220 Penal Code: Whoever causes death-

> "(a) by doing an act with the intention of causing death or such bodily injury as is likely to cause death; or

(b) by doing an act with knowledge that he is likely by such act to cause death; **except removing patient with irreversible pathology from life support where there is a need for the facilities to save the life of another patient with reversible pathology;** or

(c) by doing a rash or negligent act, commits the offence of culpable homicide.

Section 311 of the Criminal Code:

"A person who does any act or makes any omission which hasten the death of another person who, when the act is done or the omission is made is laboring under some disorder or disease arising from another cause is deemed to have killed that another person, **except in the case of a patient under life support with irreversible pathology and is withdrawn to save another with reversible pathology**"

Section 316:

"Except as hereinafter set forth, a person who unlawfully kills another under any of the following circumstances, that is to say…."

5) death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid;

6) if death is caused by wilfully stopping the breath of any person for either of such purpose is guilty of murder, is immaterial that the offender did not intend to cause death or did not know that death was likely to result, **except as in the case in section 311**"

6.3.1.3 Presumption of Consent to Withdraw Life Support

There shall be a rebuttable presumption that a patient in a permanent vegetative state has consented to the withdrawal of life support where the necessity arises. There are situations where the available beds are occupied and there is another person with a reversible pathology in need of the bed. The patient without hope of recovery may be withdrawn to assist the one with the hope of survival. The doctrine of necessity can be used as a defense in addition to the amendment of the legal framework. By necessity here it means that the act of the doctor to withdraw shall be an excuse to criminal responsibility as is the case with Netherland under Section 40 of the Netherland Criminal Code 1985.

6.3.1.4 Consent to a Person Causation of his Own Death

The principles of English Common Law that a person shall not complain about any wrong which he consented except where it causes death need to be amended as follows. Section 53 (1) and (2) of the Penal Code provides:

> "(1) No act is an offence by reason of the injury it has caused to the person or property of a person who, being above the age of eighteen years, has voluntarily and with understanding given his consent express or implied to done by that act.
>
> (2) This section shall not apply to acts which are likely to cause death or grievous hurt, nor to acts which constitute offences independently of any injury which they are capable of causing to the person who has given his consent or to his property, **except in cases of withdrawal of life support by a doctor for some medical reasons**"

Section 299 of the Criminal Code provides:

> "Consent by a person to the causing of his own death does not affect the criminal responsibility of any person by whom such death is caused, **except where a patient or his family consent to the withdrawal of his life support for medical reasons."**

6.3.1.5 Rules of Professional Conduct

It is also recommended that the rules of professional conduct particularly rule 68 shall be amended as follows:

> "A practitioner shall be adjudged to be in breach of the ethical code of practice if found to have encouraged or participated in any of the following acts: (a) Termination of a patient life by the administration of drugs, even at the patient's explicit request. (b) Prescribing or supplying drugs with the explicit intention of enabling the patient to end his or her life. (c) Termination of a patient's life through the administration of drugs with or without the patient's explicit request thinking same to be in the interest of the patient; **this shall not include removing life support from a patient with irreversible pathology to save the life of another patient with reversible pathology."**

The above amendment (provided in bold) will exempt doctors from criminal responsibility for applying the principle of triage. The essence is to save the life of

another patient with reversible pathology and in dire need of life support, where there are no enough resources to accommodate both hopeless and those with reversible pathology.

6.3.1.6 Decision of the Nigerian Supreme Court in *MDPDT v. Okonkwo*

The decision of the Supreme Court of Nigeria in *MDPDT v. Okonkwo* on the right to refuse medical treatment shall be made to include right to withdraw treatment or life support. This shall be so even where it will lead to death, especially if the case is hopeless or no chance of recovery. The patient can consent to this or his family where he is not capable of giving consent. In the alternative where doctors by their knowledge and experience or through ethics committee certify that a particular patient does not have reversible pathology, it can be withdrawn. This recommendation is in line with the principle of patient best interest (beneficence and maleficence). This view will best suit the Nigerian situation in view of the dilemma of the doctors in this situation.

6.3.2 Recommendation for Life Support Withdrawal Guidelines/Regulations

There is a serious need for guidelines on the withdrawal of life support in Nigeria since it is done as a matter of necessity. Another reason for this recommendation is the question of organs donation. Some guidelines must be provided to ensure that the dead donor rules are strictly observed. To also ensure that patients do not have their life support withdrawn to hasten their death when they have a reversible pathology, because of desperation to remove their organs. The following guideline is recommended:

i. The doctor must inform the patient or his family as the case may be, the prognosis of the patient with a justification when further therapeutic support becomes irrelevant. The doctor is under a duty to have an open discussion

about the irreversible pathology of the patient. Discuss among others the benefit and burden of treatment and the need to allow natural death.

ii. When the patient or the family, as the case may be, is informed about the need to consider the goal of treatment, the doctor should communicate the process of limiting life support.

iii. The doctor must respect the wishes of the patient express himself or by his family, next friend. (surrogate) during the family conference while taking a decision. He should ensure absolute respect of the patient's right to autonomy and self-determination to reach an informed decision while discharging his obligation.

iv. Where the family could not agree, the doctor must continue with life support. He is, however, not under any obligation to introduce a new therapy or procedure against his clinical judgment in complying with standards therapy.

v. The doctor must ensure record keeping of the entire conference. This should include the process and the final decision to ensure transparency.

vi. End of life decision is the obligation of the intensivist or attending doctor of the patient. He must ensure all other team members agree with the decision.

vii. Although there is no clear legal framework, if the patient or his family desire that life support should be withdrawn or be discharged to die at home and the doctors consider the treatment as non-beneficial, they are under ethical obligation to consider withdrawing the treatment.

viii. Where the patient or his family agree to donate an organ after death the "*death donor rule*" must be complied with and independent doctors special in the area of the disease must be consulted to give their opinion.

ix. The decision to withdraw or withhold therapies must be documented in a form duly signed by the medical team and the family. The doctor should provide an effective palliate care to the emotional needs of the family and the patient.

It is therefore hoped that if these recommendations are adopted the dilemma of the Nigerian doctors at the end of life care will be addressed and reduced to a very minimal level.

6.4 Conclusion

This research is an innovation on euthanasia using doctrinal and complimenting it with empirical research method in the Nigerian context. The study adds to the stock of knowledge and understanding of the dilemma doctors find themselves at the end of life care, thereby making suggestions on the ways out of the dilemma.

The question of the definition of euthanasia is not settled among scholars, what many termed as euthanasia is not considered as such to others. For example, withdrawing or withholding treatment is not considered as euthanasia among many renowned scholars on medical ethics. However, the definition given by the World Health Organisation (WHO) is concluded to be the accepted definition of euthanasia which includes withdrawal and withholding of treatment to hasten death.

Active euthanasia is illegal under the Nigerian legal framework. Life is considered sacred. Nobody is allowed to terminate life except through the due process of law. The power to terminate life is in the hands of God who decides when and how to end it.

This position is stronger from the Muslims perspectives, although even the Christians hold the same view. All the legal experts who responded to the interview questions hold the view that active euthanasia is illegal under the Nigerian law.

Passive euthanasia is also illegal in Nigeria because is a practice that has the same consequences as active euthanasia. However, passive euthanasia is being practiced by doctors in Nigeria in an extreme situation as a matter of necessity. Doctors withdraw life support where the situation is hopeless with the consent of the family. In Islam withdrawal of life support or treatment is acceptable where doctors from their experience and knowledge the treatment is fruitless. If the continuation of the treatment is not giving any hope or it only extends the dying process it can be withdrawn. This is the view of both religions especially Islam. Upon this conclusion, the amendment of the laws is recommended to recognise these situations.

Consent of any patient or his family to the withdrawal of treatment leading to death is not an excuse. The fact that doctors in Nigeria seek the understanding of the family of the patient does not make it legal. The law is that any person who is above 18 years and consented to his injury cannot complain. However, if the injury can result in death the consent is not acceptable. Doctors, in this case, can be held culpable for a crime.

Therefore, from the examination of the legal framework and the practice of euthanasia generally in Nigeria, there is the need for the amendment of the existing laws. However, the amendment of the law shall be to recognise passive euthanasia in form of withdrawal of life support or treatment where the case is hopeless and the necessity of saving another patient.

Examination of the factors that influence the practice of euthanasia in Nigeria reveals that acceptance of the recognition of active euthanasia is difficult if not impossible.

However, other factors show that passive euthanasia is a necessity which the culture and the religion will not be able to stop. This is in view of the necessity of the situation where passive euthanasia in form of withdrawal of life support is applied.

This is one of the early research conducted using empirical method to study euthanasia in Nigeria. Most of the studies conducted in this area are about the legality or otherwise of the phenomenon. However, in this research, the study adopted doctrinal and complement it with interviews making it socio-legal research. The study employed major actors in the field of medical practice, doctors and lawyers for the purposes of understanding the practice and its legal implications. However, nurses are some of the major caregivers rendering medical assistance to doctors, were not part of this research.

Therefore, future research will be good to recruit nurses in the study. It shall also be suggested that some sample of population shall be used by administering a questionnaire to get the number of people that may accept the practice. In other words, the research shall be conducted using mixed method, quantitative and qualitative methodology. Similar research can be conducted to look at how Nigerian doctors' response to the end of life decision of children especially children born with a serious deformity.

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PUBLICATIONS AND CONFERENCES DURING THE STUDY

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Sani Ibrahim Salihu, Yuhanif Yusof and Rohizan Halim 'Autonomy, Self Determination and Paternalistic Medical Practice in Nigeria: Some Suggested Limitations' *UNIMAID Journal of Private and Property Law* (2017) 2

Sani Ibrahim Salihu, Yuhanif Yusof and Rohizan Halim 'Tracing the Weaknesses of the Regulatory Framework for Clinical Trial in Nigeria' *Journal of Business and Social Review in Emerging Economics* (2015)1 (2) 20

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Sani Ibrahim Salihu, Yuhanif Yusof and Rohizan Halim, "Tracing the Weaknesses of the Regulatory Framework for Clinical Trial in Nigeria". First International Research Conference on Economics, Business and Social Science. Holiday Inn Hotel, Penang, Malaysia 2016. Centre for Sustainability Research & Consultancy

Sani Ibrahim Salihu, Yuhanif Yusof and Rohizan Halim, "Implication of Government Failure to Include Palliative Care Medicine in Medical Colleges" International Conference on Government & Public Affairs 2016, Universiti Utara Malaysia College of Law, Government & International Studies (COLGIS)

Sani Ibrahim Salihu, Yuhanif Yusof and Rohizan Halim, "Euthanasia the Islamic Perspectives" The 2nd International Conference and Doctoral Colloquium Faculty of Social and Management Sciences, *Bayero University, Kano – Nigeria* (BUK) 27th – 28th February 2018.

Sani Ibrahim Salihu, Yuhanif Yusof and Rohizan Halim, "A Case for Autonomy, Self-Determination and Paternalistic Medical Practice in Nigeria" Seminar on Law & Society (SOLAS 2016), 6 December 2016, School of Law, Universiti Utara Malaysia.

APPENDICES

APPENDIX A

Sample of Interview Protocol for the Respondents

Dear Participant,

I am a PhD candidate at Universiti Utara Malaysia, Malaysia. Conducting a research on the justification and legality of the practice of euthanasia in Nigeria. The aim of the research is to investigate whether it is true countries that do not legalise euthanasia have a number of cases and abuse about it. This research wants to find out if it is being practiced in Nigeria and whether there is any justification for its practice.

Please be informed that your participation in this research/interview is voluntary and will not take more than thirty minutes subject to the discussion. You can be assured of confidentiality for whatever you may say in this interview and will only be used for the purposes of this research. The result will be published as academic work.

Your kind and objective participation would be appreciated, as it will significantly contribute towards the achievement of the above-mentioned objectives of the study.

……..

Sign

APPENDIX B

INTERVIEW QUESTIONS

The interview is divided into two sections. Section A of the INTERVIEW consists of demographics such as tribe, educational level, occupation, age, gender, working experience and how often an ethical or legal problem is encountered in their practice.

Doctors

1. Name:
2. Qualification:
3. Specialisation:
4. Working experience:
5. Religion:

A. What is your take on euthanasia?
B. Have you ever given pain medication with the intention to hasten death?
C. Have you ever withdrawn life support leading to death?
D. Is withdrawing life support ethical or legal in Nigeria?
E. What if the patient could not continue to settle medical bills and he is on life support?
F. What do you do when your patient is in excruciating pain?
G. What do you do in situations of the end of life decisions?
H. Do you think Nigerian doctors practice palliative sedation or terminal sedation in end of life care?
I. Do you think euthanasia is being practiced in Nigeria?
J. If allowed by law in Nigeria will you terminate or assist your patient to end his life, if yes or no why?
K. Has any patient ever prefer death than suffering in your practice?

Religious Scholars

1. Name:
2. Qualification:
3. Specialisation:
4. working experience:
5. Religion:

A. Do you have any idea about euthanasia?
B. What does your religion say about it?
C. Is there any situation where it may be practiced?
D. What is the religious implication of practicing it?
E. Can it be allowed in Nigeria

Legal Practitioners

1. Name:
2. Qualification:

3. Specialisation:
4. Working experience:
5. Religion:
A. Is euthanasia within the contemplation of the Nigerian law?
B. Do you think a doctor can be found guilty of murder for prescribing sedative drugs that can hasten death?
C. Can euthanasia be linked to human rights, considering S. 33, 34, and 35?
D. Can euthanasia be incorporated into the Nigerian law?
E. Can the decision of Supreme Court in Dr John Okonkwo amount to passive euthanasia?

Patients

1. Name:
2. Qualification:
3. Specialisation:
4. Working experience:
5. Religion:
A. Will you request for euthanasia if you will be allowed to?
B. Why will you or why will you not?
C. Can you afford to stay on life support machine to prolong your life?
D. Will your objection to euthanasia be because of economic socio-cultural or religious reason?
E. Will pain and suffering make you opt for death?

APPENDIX C

GHAZALI SHAFIE GRADUATE SCHOOL OF GOVERNMENT
UUM Kolej Undang-Undang, Kerajaan dan Pengajian Antarabangsa
Universiti Utara Malaysia
06010 UUM SINTOK
KEDAH DARUL AMAN
MALAYSIA

Tel: 604-928 77517752
Faks (Fax): 604-928 7799
Laman Web (Web): www.gsgeg.uum.edu.my

"KEDAH AMAN MAKMUR • BERSAMA MEMACU TRANSFORMASI"

Reference No. : UUM/COLGIS/GSGSG/901025
Date : August 18 , 2016

TO WHOM IT MAY CONCERN

Sir/Madam

DATA COLLECTION FOR PH.D THESIS

This is to certify that **Sani Ibrahim Salihu** (Matric Number : 901025) is a full time Doctoral student at Universiti Utara Malaysia, Sintok, Kedah.

He needs to collect data for his research in order to fulfill the requirements of his programme.

We duly hope that your organization will be able to assist him in getting the necessary information for his research.

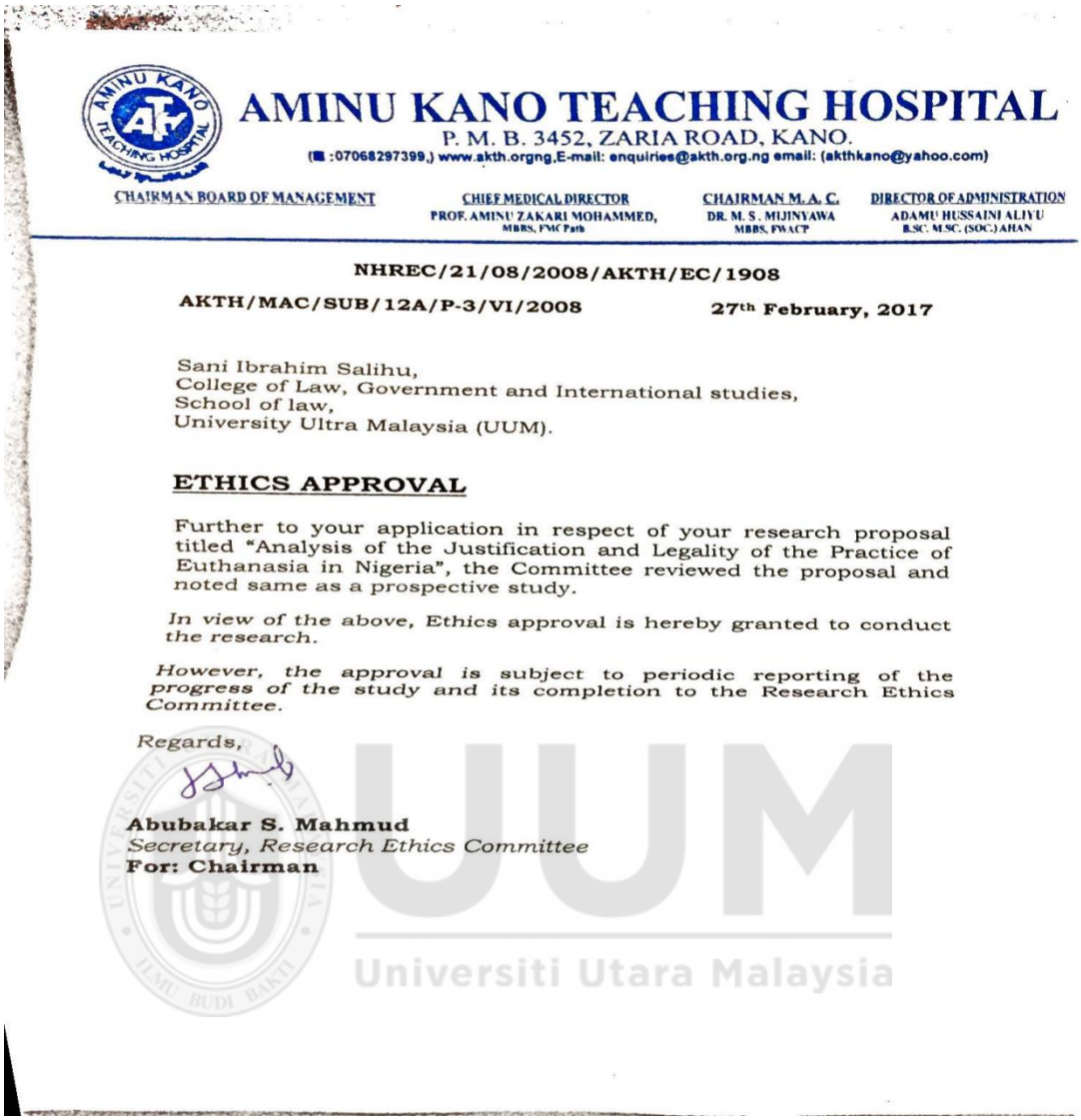
Thank you.

"KNOWLEDGE, VIRTUE, SERVICE"

Yours faithfully,

(AZAM ARNI BINTI MOHD NOOR)
Social Research Officer
On behalf of, Dean
Ghazali Shafie Graduate School of Government
Tel : 04-9287752 Fax: 04-9287799
Email : arni@uum.edu.my

APPENDIX D



AMINU KANO TEACHING HOSPITAL
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AKTH/MAC/SUB/12A/P-3/VI/2008 **27th February, 2017**

Sani Ibrahim Salihu,
College of Law, Government and International studies,
School of law,
University Ultra Malaysia (UUM).

ETHICS APPROVAL

Further to your application in respect of your research proposal titled "Analysis of the Justification and Legality of the Practice of Euthanasia in Nigeria", the Committee reviewed the proposal and noted same as a prospective study.

In view of the above, Ethics approval is hereby granted to conduct the research.

However, the approval is subject to periodic reporting of the progress of the study and its completion to the Research Ethics Committee.

Regards,

Abubakar S. Mahmud
Secretary, Research Ethics Committee
For: Chairman